



CR 2004/79 - Income tax: scrip for scrip roll-over: merger of United Grower Holdings Limited and ABB Grain Limited

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Class Ruling

Income tax: scrip for scrip roll-over: merger of United Grower Holdings Limited and ABB Grain Limited

| | |
|--|-----------|
| Contents | Para |
| What this Class Ruling is about | 1 |
| Date of effect | 8 |
| Arrangement | 9 |
| Ruling | 16 |
| Explanation | 19 |
| Detailed contents list | 42 |

Preamble

*The number, subject heading, **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 apply 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 of United Grower Holdings Limited (UGH) who:

- (a) are 'residents of Australia' within the meaning of 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 in Subdivision 124-M of the ITAA 1997;
- (c) participate in the UGH Scheme of Arrangement for UGH shareholders under the planned merger of UGH and ABB Grain Limited (ABB); and
- (d) hold their UGH shares on capital account.

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 actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 15.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:
 - 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
 - this Ruling may be withdrawn or modified.
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Date of effect

8. This Class Ruling applies to the year ended 30 June 2005.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the documents listed below. 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) Class Ruling Application dated 19 May 2004 from Ernst & Young requesting the ATO make a Class Ruling in relation to the capital gains scrip for scrip roll-over provisions as they apply to the exchange of shares in UGH for shares in ABB;

- (b) the documentation accompanying the application:
- UGH Scheme of Arrangement;
 - Merger Agreement between ABB, AusBulk Limited (AusBulk) and UGH;
 - UGH Deed Poll;
 - Amendments to the Constitution of ABB;
 - Constitution of UGH;
 - Deed of Amendment to the Merger Agreement between ABB, AusBulk and UGH; and
- (c) letters from Ernst & Young dated 18 June 2004 and 19 July 2004 providing further clarification and information to the ATO.

10. The arrangement that is the subject of this Ruling involves a proposed merger of UGH and ABB pursuant to a scheme of arrangement (the UGH Scheme of Arrangement).

11. This arrangement is part of a wider transaction involving the proposed merger of ABB, UGH and AusBulk which will be undertaken pursuant to two schemes of arrangement. These are:

- (a) the UGH Scheme of Arrangement; and
- (b) the AusBulk Scheme of Arrangement.

12. The AusBulk Scheme of Arrangement does not form part of the arrangement that is the subject of this Ruling. For further information on this arrangement refer to CR 2004/80.

13. Under the UGH Scheme of Arrangement, ABB will acquire 100% of the UGH shares on issue. UGH shareholders will receive ABB B class shares in exchange for their UGH shares.

14. The number of ABB B class shares that UGH shareholders will receive for each UGH share they hold is calculated in accordance with a formula prescribed in the UGH Scheme of Arrangement.

15. Neither ABB nor any other company in the wholly-owned ABB group will own shares in UGH prior to the implementation of the merger.

Ruling

16. Subject to the qualifications in paragraphs 4 to 6 of this Ruling, UGH shareholders who are within the class of persons to which this Ruling applies can choose roll-over under Subdivision 124-M of the ITAA 1997 if:

- (a) apart from the roll-over for which Subdivision 124-M provides, they would make a capital gain in relation to the disposal of their UGH share; and

- (b) any capital gain that could be made upon a future CGT event happening in relation to a replacement share in ABB would not be disregarded (except because of a roll-over).

17. Where a shareholder chooses roll-over in respect of a UGH share, the capital gain arising from the exchange of that share is disregarded.

18. The first element of the cost base of each ABB B class share will be equal to an amount which is reasonably attributable to the cost base of each UGH share for which it was exchanged and for which roll-over was obtained: subsection 124-785(2) of the ITAA 1997. The first element of the reduced cost base of each ABB B class share will be calculated similarly: subsection 124-785(4).

Explanation

Availability of scrip for scrip roll-over

19. Scrip for scrip roll-over enables a shareholder to disregard a capital gain they make from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives in exchange a replacement share. The capital gain is disregarded completely if the only capital proceeds the shareholder receives is a replacement share. The roll-over also provides that the cost base and reduced cost base of the replacement shares is based on the cost base and reduced cost base of the original shares at the time of the roll-over.

20. Subdivision 124-M of the ITAA 1997 contains a number of conditions for, and exceptions to, the eligibility of a shareholder to choose scrip for scrip roll-over. Below is an outline of the main conditions and exceptions which are relevant to the circumstances of the arrangement that is the subject of this Ruling.

Subparagraph 124-780(1)(a)(i) of the ITAA 1997 requires an entity to exchange a share in a company for a share in another company

21. This requirement will be satisfied by a UGH shareholder as under the UGH Scheme of Arrangement UGH shares are exchanged for ABB B class shares.

Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an original entity (UGH) be exchanged in consequence of a single arrangement that results in the acquiring entity (ABB) becoming the owner of 80% or more of the voting shares in the original entity

22. In the context of the scrip for scrip provisions the merger of UGH and ABB under the UGH Scheme of Arrangement is considered to be a single arrangement.

23. The only UGH shares which satisfy the definition of voting shares in subsection 995-1(1) of the ITAA 1997 are the shares that are the subject of the arrangement.

24. Accordingly, upon implementation of the UGH Scheme of Arrangement this requirement will be satisfied as ABB will become the owner of all of the UGH shares.

Paragraphs 124-780(1)(b) and 124-780(2)(b) of the ITAA 1997 require that the exchange of shares be in consequence of a single arrangement in which at least all owners of voting shares in the original entity (UGH) could participate

25. This requirement will be satisfied as all shareholders in UGH are able to participate in the UGH Scheme of Arrangement.

Paragraphs 124-780(1)(b) and 124-780(2)(c) of the ITAA 1997 require that the exchange of shares is in consequence of a single arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (UGH)

26. This requirement is satisfied as the same offer is made to all UGH shareholders who will dispose of their UGH shares in exchange for ABB B class shares.

27. Issuing to a nominee for sale the ABB B class shares to which some foreign shareholders of UGH would otherwise be entitled does not prevent the arrangement being on substantially the same terms for all owners of shares in UGH.

Paragraphs 124-780(1)(c) and 124-780(3)(a) of the ITAA 1997 require the original interest holder (a UGH shareholder) to have acquired its original interest (a UGH share) on or after 20 September 1985

28. This requirement will be satisfied as all of the shares in UGH were issued on or after 20 September 1985.

Paragraphs 124-780(1)(c) and 124-780(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a UGH shareholder) would make a capital gain from a CGT event happening in relation to the original interest (a UGH share)

29. Whether a UGH shareholder would, apart from the roll-over, make a capital gain from the disposal of any of its shares to ABB is a question of fact that is dependent on the specific circumstances of each shareholder – in particular on the cost base of each UGH share and the value of the capital proceeds received. This ruling is limited in this regard by paragraph 16(a).

Paragraphs 124-780(1)(c) and 124-780(3)(c) of the ITAA 1997 require that the replacement interest is in the acquiring entity (ABB) or the ultimate holding company of the wholly-owned group of which it is a member (ABB)

30. This requirement is satisfied as the replacement interest received by UGH shareholders will be in ABB which is the ultimate holding company of a wholly-owned group.

Paragraphs 124-780(1)(c) and 124-780(3)(d) of the ITAA 1997 require that the original interest holder (a UGH shareholder) choose to obtain the roll-over

31. Paragraph 16 limits this Ruling to shares in respect of which roll-over is chosen.

Additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a UGH shareholder) and the acquiring entity (ABB) did not deal with each other at arm's length and:

- (a) **neither the original entity (UGH) nor the replacement entity (ABB) had at least 300 members just before the arrangement started: paragraph 124-780(4)(a) of the ITAA 1997; or**
- (b) **the original interest holder (a UGH shareholder), the original entity (UGH) and the acquiring entity (ABB) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b) of the ITAA 1997**

32. Paragraph 124-780(4)(a) of the ITAA 1997 will not apply because both UGH and ABB will have at least 300 members just before the arrangement started. Section 124-810 of the ITAA 1997 will not apply to either UGH or ABB as their ownership is not concentrated in the manner contemplated by that section.

33. Paragraph 124-780(4)(b) of the ITAA 1997 will not apply because UGH and ABB were not members of the same linked group (within the meaning of section 170-260) just before the arrangement started.

Exceptions to obtaining scrip for scrip roll-over

Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a UGH shareholder) might make from their replacement interest (ABB share) would be disregarded

34. This exception may apply if, for example, the ABB B class shares are trading stock. Paragraph 16(b) limits this Ruling in this regard.

Paragraph 124-795(2)(b) of the ITAA 1997 provides that the roll-over is not available if the original interest holder (a UGH shareholder) and the acquiring entity (ABB) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a UGH share), and the acquiring entity is a foreign resident

35. UGH shareholders and ABB were not members of the same wholly-owned group just prior to the exchange of shares. Therefore this exception does not apply.

Cost base and reduced cost base of ABB Shares

36. The first element of the cost base of each ABB B class share received under the arrangement will be equal to an amount which is reasonably attributable to the cost base of each UGH share for which it was exchanged and for which roll-over was obtained: subsection 124-785(2) of the ITAA 1997. The first element of the reduced cost base of each ABB B class share is worked out on a similar basis: subsection 124-785(4).

37. The following example provides guidance as to how shareholders of UGH may work out the first element of the cost base of their ABB B class shares. Where a UGH shareholder works out the first element of the cost base of their ABB B class shares in accordance with the approach adopted in the example, the ATO will accept that this represents a reasonable attribution of the cost base of each UGH share. However it is recognised that this approach may not give the only reasonable attribution.

38. Note: The example assumes that under the UGH Scheme of Arrangement a UGH shareholder will receive 3 ABB B class shares for every 5 UGH shares they hold. This ratio of ABB B class shares to UGH shares is used for illustrative purposes only. The actual ratio of ABB B class shares to UGH shares will be calculated in accordance with a formula prescribed in the UGH Scheme of Arrangement.

Example

39. Genevieve acquired shares in UGH after 20 September 1985. She acquired 240 UGH shares for \$2.16 per share (the first parcel) and several months later acquired a further 60 UGH shares for \$2.40 per share (the second parcel). Under the UGH Scheme of Arrangement, it is assumed that Genevieve received 3 ABB B class shares for each 5 UGH shares exchanged for a total of 180 ABB B class shares in exchange for her UGH shares. Of the 180 ABB B class shares, 144 shares were attributable to the first parcel of UGH shares and 36 to the second parcel.

40. Genevieve may calculate the first element of the cost base of her ABB B class shares as follows:

(a) First parcel:

Cost base of 240 UGH shares:

= 240 x \$2.16

= \$518.40

Cost base of 144 ABB B class shares:

= \$518.40/144

= \$3.60 per share

(b) Second parcel:

Total cost base of 60 UGH shares:

= 60 x \$2.40

= \$144

Cost base of 36 ABB B class shares:

= \$144/36

= \$4.00 per share

41. The first element of the reduced cost base of Genevieve's ABB B class shares may be calculated in a similar manner.

Detailed contents list

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

| | Paragraph |
|---|------------------|
| What this Class Ruling is about | 1 |
| Tax law(s) | 2 |
| Class of persons | 3 |
| Qualifications | 4 |
| Date of effect | 8 |
| Arrangement | 9 |
| Ruling | 16 |
| Explanation | 19 |
| Availability of scrip for scrip roll-over | 19 |
| Subparagraph 124-780(1)(a)(i) of the ITAA 1997 requires an entity to exchange a share in a company for a share in another company | 21 |
| Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an original entity (UGH) be exchanged in consequence of a single arrangement that results in the acquiring entity (ABB) becoming the owner of 80% or more of the voting shares in the original entity | 22 |
| Paragraphs 124-780(1)(b) and 124-780(2)(b) of the ITAA 1997 require that the exchange of shares be in consequence of a single arrangement in which at least all owners of voting shares in the original entity (UGH) could participate | 25 |
| Paragraphs 124-780(1)(b) and 124-780(2)(c) of the ITAA 1997 require that the exchange of shares is in consequence of a single arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (UGH) | 26 |
| Paragraphs 124-780(1)(c) and 124-780(3)(a) of the ITAA 1997 require the original interest holder (a UGH shareholder) to have acquired its original interest (a UGH share) on or after 20 September 1985 | 28 |
| Paragraphs 124-780(1)(c) and 124-780(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a UGH shareholder) would make a capital gain from a CGT event happening in relation to the original interest (a UGH share) | 29 |
| Paragraphs 124-780(1)(c) and 124-780(3)(c) of the ITAA 1997 require that the replacement interest is in the acquiring entity (ABB) or the ultimate holding company of the wholly-owned group of which it is a member (ABB) | 30 |

| | |
|---|-----------|
| Paragraphs 124-780(1)(c) and 124-780(3)(d) of the ITAA 1997 require that the original interest holder (a UGH shareholder) choose to obtain the roll-over | 31 |
| Additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a UGH shareholder) and the acquiring entity (ABB) did not deal with each other at arm's length and: | |
| (a) neither the original entity (UGH) nor the replacement entity (ABB) had at least 300 members just before the arrangement started: paragraph 124-780(4)(a) of the ITAA 1997; or | |
| (b) the original interest holder (a UGH shareholder), the original entity (UGH) and the acquiring entity (ABB) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b) of the ITAA 1997 | 32 |
| Exceptions to obtaining scrip for scrip roll-over | 34 |
| Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a UGH shareholder) might make from their replacement interest (ABB share) would be disregarded | 34 |
| Paragraph 124-795(2)(b) of the ITAA 1997 provides that the roll-over is not available if the original interest holder (a UGH shareholder) and the acquiring entity (ABB) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a UGH share), and the acquiring entity is a foreign resident | 35 |
| Cost base and reduced cost base of ABB Shares | 36 |
| <i>Example</i> | 39 |
| Detailed contents list | 42 |

Commissioner of Taxation

28 July 2004

| | |
|--|------------------------|
| <i>Previous draft:</i> | - company |
| Not previously issued as a draft | - cost base |
| | - interests |
| <i>Related Rulings/Determinations:</i> | - ordinary share |
| TR 92/1; TR 97/16; CR 2001/1; | - original interest |
| CR 2004/80 | - replacement interest |
| | - resident |
| | - roll-over |
| <i>Subject references:</i> | - roll-over relief |
| - arrangement | - scrip |
| - capital proceeds | - scrip for scrip |
| - CGT event | - share |

- shareholder
- takeover

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Subdiv 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)
- 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)

- ITAA 1997 124-780(3)(d)
 - ITAA 1997 124-780(4)(a)
 - ITAA 1997 124-780(4)(b)
 - ITAA 1997 124-780(5)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(2)(b)
 - ITAA 1997 124-810
 - ITAA 1997 170-260
 - ITAA 1997 995-1(1)
 - Copyright Act 1968
 - TAA 1953 Pt IVA
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ATO references

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