



***CR 2005/11 - Income tax: scrip for scrip roll-over:
exchange of ordinary shares and options in Metcash
Trading Limited for ordinary shares and options in
The Newco Project X Limited***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*



Class Ruling

Income tax: scrip for scrip roll-over: exchange of ordinary shares and options in Metcash Trading Limited for ordinary shares and options in The Newco Project X Limited

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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 ordinary shareholders and option holders of Metcash Trading Limited (Metcash) who:

- (a) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936*;
- (b) are not 'significant stakeholders' within the meaning of that expression in Subdivision 124-M of the ITAA 1997; and
- (c) participate in either the Metcash Share Scheme of Arrangement for Metcash ordinary shareholders or the Metcash Option Scheme of Arrangement for Metcash option holders.

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 20.
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 1 February 2005 from Greenwoods & Freehills requesting the Tax Office make a Class Ruling in relation to the capital gains tax scrip for scrip roll-over provisions as they apply to the exchange of Metcash ordinary shares and Metcash

options for The Newco Project X Limited (Newco) ordinary shares and Newco options; and

- (b) the documentation accompanying the application:
- the Scheme Booklet in relation to the Metcash Share Scheme of Arrangement and the Metcash Option Scheme of Arrangement; and
 - the Transaction Overview in relation to the Metcash Share Scheme of Arrangement and the Metcash Option Scheme of Arrangement.

10. The arrangement that is the subject of this Ruling involves:
- (a) the transfer of ordinary shares in Metcash to Newco pursuant to the Metcash Share Scheme of Arrangement; and
- (b) the cancellation of options in Metcash held by Metcash employees pursuant to the Metcash Option Scheme of Arrangement.
11. Newco is an Australian resident company, the shares in which are held on trust for two individuals.
12. Under the Metcash Share Scheme of Arrangement, ordinary shareholders in Metcash will receive ordinary shares in Newco on a 1:1 exchange ratio as consideration for the disposal of their shares.
13. Where the shareholder has an address outside Australia, New Zealand or South Africa, the transferring shareholder will not receive ordinary shares in Newco. Instead, the ordinary shares they would have received in Newco will be transferred to a nominee for sale with the proceeds remitted to the shareholder.
14. Under the Metcash Option Scheme of Arrangement, option holders in Metcash will receive options in Newco on a 1:1 exchange ratio as consideration for the cancellation of their options. The Newco options will be on substantially the same terms and values as the cancelled Metcash options.
15. The arrangement that is the subject of this Ruling is part of a wider transaction which will result in the Newco wholly-owned group becoming the owner of all the ordinary shares in Metcash. Approximately 52% of the Metcash ordinary shares are currently held by Soetensteeg 2-61 Exploitiemaatschappij BV (Soetensteeg), a 100% subsidiary of Metoz Holdings Limited (Metoz). Metoz is a South African company whose shares are listed on the Johannesburg Stock Exchange.
16. Pursuant to a separate scheme of arrangement (the Metoz Scheme of Arrangement), Newco will acquire all of the issued shares in Metoz. Upon implementation of the Metoz Scheme of Arrangement, Newco will hold the 52% shareholding in Metcash through Metoz and Soetensteeg.

17. The Metcash Share Scheme of Arrangement and the Metcash Option Scheme of Arrangement are conditional upon the Metoz Scheme of Arrangement being implemented. Under the Metcash Share Scheme of Arrangement, Newco will acquire the remaining 48% of Metcash which is held by the public.

18. Apart from Soetensteeg, no other company in the Newco wholly-owned group will own ordinary shares in Metcash at the time of implementation of the arrangement.

19. The ordinary shares in Metcash are the only voting shares (as defined in the *Corporations Act 2001*) in Metcash.

20. Metcash will have at least 300 members just before the arrangement starts.

Ruling

21. Metcash shareholders and Metcash option holders who are within the class of persons to which this Ruling applies can choose roll-over under Subdivision 124-M of the ITAA 1997 in relation to a Metcash ordinary share or Metcash option if:

- (a) they acquired the ordinary share or option on or after 20 September 1985;
- (b) apart from the roll-over for which Subdivision 124-M provides, they would make a capital gain in relation to the disposal of their Metcash ordinary share or the cancellation of their Metcash option; and
- (c) any capital gain that could be made upon a future CGT event happening in relation to a replacement ordinary share or option in Newco would not be disregarded (except because of a roll-over).

22. Where a shareholder or option holder chooses roll-over in respect of a Metcash ordinary share or Metcash option, the capital gain arising from the exchange of that share or option is disregarded.

Explanation

Availability of scrip for scrip roll-over

23. Scrip for scrip roll-over in Subdivision 124-M of the ITAA 1997 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 rules also enable an option holder to disregard a capital gain they make from an option if they receive in exchange a replacement option.

24. The capital gain is disregarded completely if the only capital proceeds the shareholder or option holder receives is a replacement share or option. The roll-over also provides that the cost base and reduced cost base of the replacement shares or options is based on the cost base and reduced cost base of the original shares or options at the time of the roll-over.

25. Subdivision 124-M of the ITAA 1997 contains a number of conditions for, and exceptions to, the eligibility of a shareholder or option holder 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

26. This requirement will be satisfied by a Metcash ordinary shareholder as under the Metcash Share Scheme of Arrangement, a Metcash ordinary share is exchanged for a Newco ordinary share.

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

27. This requirement will be satisfied by a Metcash option holder as under the Metcash Option Scheme of Arrangement, a Metcash option is exchanged for a Newco option.

Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares or options in an original entity (Metcash) be exchanged in consequence of a single arrangement that results in the acquiring entity (Newco), and other members of the Newco wholly-owned group, becoming the owner of 80% or more of the voting shares in the original entity

28. In the context of the scrip for scrip provisions, the exchange of ordinary shares and options under the Metcash Share Scheme of Arrangement and the Metcash Option Scheme of Arrangement are considered to be in consequence of a single arrangement.

29. The requirement that Newco, and other members of the Newco wholly-owned group, become the owner of 80% or more of the voting shares in Metcash is also satisfied. Whilst Newco will only acquire approximately 48% of the voting shares in Metcash under the Metcash Share Scheme of Arrangement, the 52% shareholding in Metcash held by Newco through Metoz and Soetensteeg may also be taken into account in satisfying the 80% threshold.

30. This shareholding may be counted because under clause 4.2 of the Metcash Share Scheme of Arrangement, Newco must receive a print-out of the register of members of Metoz showing it as the sole registered shareholder in Metoz before it can acquire the remaining 48% shareholding pursuant to the Scheme. As a result, both Metoz and Soetensteeg would be members of the Newco wholly-owned group prior to the arrangement being implemented.

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 (Metcash) could participate apart from the acquiring entity (Newco) or members of the acquiring entity's wholly-owned group

31. All owners of voting shares in Metcash, apart from Soetensteeg, are able to participate in the Metcash Share Scheme of Arrangement. However, as Soetensteeg will be a member of the Newco wholly-owned group at the time Newco becomes the owner of the 48% shareholding in Metcash, this requirement will be satisfied.

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 (Metcash)

32. This requirement is satisfied as all the ordinary shareholders in Metcash who are able to participate under the Metcash Share Scheme of Arrangement are offered ordinary shares in Newco. Likewise, all the option holders in Metcash who are able to participate under the Metcash Option Scheme of Arrangement are offered options in Newco.

33. Issuing to a nominee for sale the Newco shares to which some foreign resident ordinary shareholders of Metcash would otherwise be entitled does not prevent the arrangement being on substantially the same terms for all owners of ordinary shares in Metcash.

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

34. Roll-over will only be available for those Metcash ordinary shares and options that were acquired on or after 20 September 1985. Paragraph 21(a) limits this Ruling in this regard.

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 Metcash ordinary shareholder or option holder) would make a capital gain from a CGT event happening in relation to the original interest (a Metcash ordinary share or option)

35. Whether a Metcash ordinary shareholder or option holder would, apart from the roll-over, make a capital gain from either the disposal of a share to Newco or the cancellation of an option, is a question of fact that is dependent on the specific circumstances of each shareholder or option holder – in particular on the cost base of each Metcash ordinary share or Metcash option and the value of the capital proceeds received. Paragraph 21(b) limits this Ruling in this regard.

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

36. This requirement is satisfied as the replacement ordinary shares and options will be in Newco 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 Metcash ordinary shareholder or option holder) choose to obtain the roll-over

37. Whether a Metcash ordinary shareholder or option holder chooses roll-over is a question of fact.

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

- (a) neither the original entity (Metcash) nor the replacement entity (Newco) 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 Metcash ordinary shareholder or option holder), the original entity (Metcash) and the acquiring entity (Newco) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b) of the ITAA 1997***

38. Paragraph 124-780(4)(a) of the ITAA 1997 will not apply because Metcash has at least 300 members just before the arrangement started. Section 124-810 of the ITAA 1997 will not apply to Metcash as its ownership is not concentrated in the manner contemplated by that section.

39. Paragraph 124-780(4)(b) of the ITAA 1997 will also not apply. Even if Metcash and Newco were members of the same linked group (within the meaning of section 170-260 of the ITAA 1997) just before the arrangement started, no Metcash ordinary shareholder or option holder, apart from Soetensteeg, would have been a member of that group.

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 Metcash ordinary shareholder or option holder) might make from their replacement interest (a Newco ordinary share or option) would be disregarded

40. This exception may apply if, for example, the Newco ordinary shares or options are held as trading stock. Paragraph 21(c) 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 Metcash ordinary shareholder or option holder) and the acquiring entity (Newco) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a Metcash ordinary share or option), and the acquiring entity is a foreign resident

41. This exception does not apply as Newco is not a foreign resident.

Detailed contents list

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<i>Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares or options in an original entity (Metcash) be exchanged in consequence of a single arrangement that results in the acquiring entity (Newco), and other members of the Newco wholly-owned group, becoming the owner of 80% or more of the voting shares in the original entity</i>	28
<i>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 (Metcash) could participate apart from the acquiring entity (Newco) or members of the acquiring entity's wholly-owned group</i>	31
<i>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 (Metcash)</i>	32
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<i>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 Metcash ordinary shareholder or option holder) would make a capital gain from a CGT event happening in relation to the original interest (a Metcash ordinary share or option)</i>	35
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<i>Paragraphs 124-780(1)(c) and 124-780(3)(d) of the ITAA 1997 require that the original interest holder (a Metcash ordinary shareholder or option holder) choose to obtain the roll-over</i>	37

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

(a) neither the original entity (Metcash) nor the replacement entity (Newco) 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 Metcash ordinary shareholder or option holder), the original entity (Metcash) and the acquiring entity (Newco) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b) of the ITAA 1997

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Exceptions to obtaining scrip for scrip roll-over

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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 Metcash ordinary shareholder or option holder) might make from their replacement interest (a Newco ordinary share or option) would be disregarded

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

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Detailed contents list

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Commissioner of Taxation

16 March 2005

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

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780(1)(a)(i)
 - ITAA 1997 124-780(1)(a)(ii)
 - ITAA 1997 124-780(1)(b)
 - ITAA 1997 124-780(1)(c)
 - ITAA 1997 124-780(2)(a)
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 - ITAA 1997 124-780(3)(a)
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 - 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 124-795(2)(a)
 - ITAA 1997 124-795(2)(b)
 - ITAA 1997 124-810
 - ITAA 1997 170-260
 - Copyright Act 1968
 - Corporations Act 2001
 - TAA 1953 Pt IVA
-

ATO references

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