



# ***CR 2005/75 - Income tax: scrip for scrip roll-over: proposed acquisition of Foodland Associated Limited by Metcash 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 2005*



## Class Ruling

### Income tax: scrip for scrip roll-over: proposed acquisition of Foodland Associated Limited by Metcash 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**, **Withdrawal**, **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

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' 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 laws dealt with in this Ruling are the following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997):

- section 104-10;
- section 109-10;
- subsection 116-20(1); and
- Subdivision 124-M.

#### **Class of persons**

3. The class of persons to whom this Ruling applies is the shareholders of Foodland Associated Limited (FAL) who:

- (a) hold their FAL shares on capital account;
- (b) transfer their FAL shares to Metcash Trading Limited (Metcash Trading), a wholly owned subsidiary of Metcash Limited (Metcash), under the scheme of transfer (referred to as the Transfer Scheme and further described in paragraphs 18 to 22) and receive scrip in Metcash;

- (c) are not 'significant stakeholders' within the meaning of that expression in Subdivision 124-M of the ITAA 1997; and
- (d) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936*.

4. However, the class of persons excludes Metcash, or any subsidiary of Metcash that holds shares in FAL.

## Qualifications

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

6. 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 11 to 34.

7. If the arrangement actually carried out is materially different to 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

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9. This Ruling applies to the year of income ended 30 June 2006 or substituted accounting period. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Withdrawal

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10. This Ruling is withdrawn immediately after 30 June 2006. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the arrangement during the term of the Ruling.

## Arrangement

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11. The arrangement that is the subject of this Ruling is described below. The description is based on, and includes reference to, the following documents:

- (a) Class Ruling application dated 17 August 2005 from Ernst & Young requesting the Commissioner make a Class Ruling in relation to scrip for scrip roll-over relief that may apply to the acquisition of FAL by Metcash;
- (b) FAL and Metcash Press Releases of 25 May 2005 and 30 May 2005;
- (c) draft Merger Implementation Agreement – Transfer Scheme dated 11 August 2005;
- (d) draft FAL Scheme Booklet dated 8 August 2005; and
- (e) e-mails from Ernst & Young from 15 June 2005 to 13 September 2005.

**Note 1:** Certain information received from Ernst & Young has been provided on a commercial in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

**Note 2:** Certain key terms contained in this Ruling are defined in the table in Appendix A.

12. The arrangement that is the subject of this Ruling involves each shareholder in FAL transferring their FAL shares to Metcash Trading (the arrangement is discussed in more detail from paragraph 23).

13. The arrangement is part of a proposal announced by FAL on 25 May 2005. The proposal involves the acquisition of FAL's Australian business assets (excluding Australian Woolworths Action Stores) by Metcash and the acquisition of FAL's New Zealand business assets and Australian Woolworths Action Stores by Woolworths Limited (WOW).

14. The acquisitions will occur through the implementation of two separate schemes of arrangement; the Demerger Scheme and the Transfer Scheme.

## **The Demerger Scheme**

15. The business assets of FAL will be divided as follows:
  - (a) Progressive Enterprises Holdings Limited (PEH) (a recently incorporated wholly owned subsidiary of FAL) will acquire FAL's New Zealand business assets; and
  - (b) FAL will hold the Australian business assets.
16. PEH shares will be transferred from FAL to FAL shareholders to effect the demerger.
17. The Demerger Scheme is the subject of Class Ruling CR 2005/74.

## **The Transfer Scheme**

18. Immediately following the demerger it is proposed that:
  - (a) PEH shares will be transferred to the WOW Group; and
  - (b) FAL shares will be transferred to the Metcash Group.
19. The transfer of PEH to the WOW Group and the transfer of FAL to the Metcash Group are to be implemented under one scheme of arrangement (the Transfer Scheme). The transfers to the WOW Group and the Metcash Group cannot occur separately.
20. If the Transfer Scheme is approved by FAL shareholders, the demerged business assets acquired by PEH and transferred to the WOW Group will include Australian Woolworth Action Stores. If the Transfer Scheme is not approved the demerged business assets acquired by PEH will not include Australian Woolworths Action Stores.
21. The Transfer Scheme is conditional upon approval by FAL shareholders of the Demerger Scheme. The Demerger scheme is not conditional upon approval of the Transfer Scheme. Both schemes require approval by the Court.
22. The Transfer Scheme as it relates to the transfer of PEH shares to the WOW Group is the subject of Class Ruling CR 2005/76.

## **The Transfer Scheme where FAL shares are transferred to the Metcash Group**

23. The Transfer Scheme will result in Metcash Trading acquiring 100% of the voting shares in FAL. Metcash will then be the ultimate holding company of FAL.

24. Under the Transfer Scheme, shareholders of FAL may elect to receive either:

- Metcash Cash Consideration (expected to be approximately \$6.33 in cash for each FAL share); or
- Metcash Share Consideration (expected to be approximately 2.07 Metcash shares for each FAL share).

A FAL shareholder who does not make a valid election will receive the Metcash Cash Consideration.

25. If Australian Woolworth Action Store(s) cannot be transferred to the WOW Group the total consideration will be increased by their value.

26. The Metcash Cash Consideration is subject to adjustments to reflect the financial position of the FAL Group at the time the Transfer and Demerger Schemes are implemented. The adjustments will increase or decrease an initial amount of \$6.41 to reflect movements in FAL's asset values before the Transfer Scheme is finalised. These adjustments may include a 'Tax Receivable' which is discussed at paragraphs 28 to 31. It is expected that the final amount will be \$6.33.

27. The Metcash Share Consideration is subject to the same adjustments as the Metcash Cash Consideration (paragraph 26). An initial 2.09 Metcash shares for each FAL share is expected to be 2.07 shares after the adjustments.

### **The Tax Receivable**

28. FAL's financial accounts include a Tax Receivable for \$25 million in relation to a tax dispute with the Commissioner of Taxation.

29. If FAL or a subsidiary of FAL receives or becomes entitled to receive any amount for the Tax Receivable from the Commissioner of Taxation before the Consideration Determination Date under the Transfer Scheme that amount will be added to the total Metcash consideration.

30. If no amount is received in respect of the Tax Receivable before the Consideration Determination Date under the Transfer Scheme, there will be no adjustment to the Metcash Consideration (an amount of \$1 million will be deducted from the Metcash Consideration to pursue recovery of the Tax Receivable).

31. If any part of the Tax Receivable is received after the Consideration Determination Date under the Transfer Scheme, Metcash Trading has agreed that it will pay an additional amount to FAL shareholders equal to the amount received from the Commissioner of Taxation less the costs in excess of \$1 million, if any, incurred in recovering that amount. Each FAL shareholder will receive a proportion of the net Tax Receivable (if any) as soon as practicable after the dispute is resolved. That payment will be separate and subsequent to the Metcash Cash Consideration or Metcash Share Consideration.

## Other aspects of the Transfer Scheme

32. The Metcash shares to which an ineligible overseas shareholder may become entitled under the Transfer Scheme will be transferred to an agent of Metcash. Metcash will issue those Metcash shares to the Metcash agent who will then sell those Metcash shares and remit the average net proceeds of sale to each ineligible overseas shareholder. Generally, an ineligible overseas shareholder is a FAL shareholder whose address, as shown on the register of members of FAL, is not in Australia or New Zealand.

33. Both FAL and Metcash have at least 300 members just before the commencement of the arrangement. There are no significant stakeholders or common stakeholders in either FAL or Metcash.

34. Both FAL and Metcash Trading are Australian residents at the time of the arrangement.

## Ruling

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### Disposal of FAL shares to Metcash Trading

35. CGT event A1 will happen when a FAL shareholder disposes of a FAL share to Metcash Trading under the arrangement described in this Ruling (section 104-10 of the ITAA 1997).

36. The CGT event will happen on the Transfer Implementation Date when FAL shares are transferred to Metcash Trading (subsection 104-10(3) of the ITAA 1997).

37. A FAL shareholder will make a capital gain from CGT event A1 happening if the capital proceeds for the disposal exceed the cost base of a FAL share. The FAL shareholder will make a capital loss if those capital proceeds are less than the FAL share's reduced cost base (subsection 104-10(4) of the ITAA 1997).

38. The capital proceeds for the disposal of the FAL shares will be:

- for shareholders who elect to receive the Metcash Cash Consideration – the amount of cash received (or entitled to be received) and the market value of the right to a separate payment in relation to the Tax Receivable at the time the shareholder disposes of their FAL shares to Metcash Trading; or
- for shareholders who elect to receive the Metcash Share Consideration – the market value of the Metcash shares received (or entitled to be received) and the right to a separate payment in relation to the Tax Receivable at the time the shareholder disposes of their FAL shares to Metcash Trading.

(subsection 116-20(1) of the ITAA 1997).

**Time of acquisition of replacement interest**

39. A replacement Metcash share will be acquired by a FAL shareholder when the Metcash shares are issued or allotted to them (item 2 in the table in section 109-10 of the ITAA 1997).

**Availability of scrip for scrip roll-over**

40. FAL shareholders will be eligible to choose scrip for scrip roll-over to the extent that they receive Metcash shares in exchange for their FAL shares under the Transfer Scheme if:

- (a) they acquired their FAL shares on or after 20 September 1985 (paragraph 124-780(3)(a) of the ITAA 1997);
- (b) apart from the roll-over under Subdivision 124-M, they would make a capital gain from the CGT event A1 that happens to their FAL shares (paragraph 124-780(3)(b) of the ITAA 1997); and
- (c) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement Metcash share (subsection 124-795(2) of the ITAA 1997).

**Consequences of roll-over where only Metcash shares are received**

41. If the tax dispute with the Commissioner of Taxation in relation to the Tax Receivable is resolved before the Consideration Determination Date under the Transfer Scheme, a shareholder who has chosen the Metcash Share Consideration will receive only Metcash shares.

42. If a shareholder receives only Metcash shares for the disposal of their FAL shares and chooses roll-over, the capital gain from the disposal will be disregarded (subsection 124-785(1) of the ITAA 1997).

43. The first element of the cost base of each Metcash share received will be equal to an amount which is reasonably attributable to the cost base of each FAL 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 is calculated similarly (subsection 124-785(4) of the ITAA 1997).

**Consequences of roll-over where both Metcash shares and the right in relation to the Tax Receivable are received**

44. If the dispute with the Commissioner of Taxation in relation to the Tax Receivable has not been resolved before the Consideration Determination Date under the Transfer Scheme, a shareholder who has chosen the Metcash Share Consideration will receive Metcash shares and the right in relation to the Tax Receivable.

45. If a FAL shareholder receives Metcash shares and the right in relation to the Tax Receivable for the disposal of their FAL shares and chooses roll-over, the capital gain from the disposal will be disregarded to the extent that the shareholder receives Metcash shares. The capital gain is not disregarded to the extent that the shareholder receives the right to the Tax Receivable for the disposal of their FAL shares (section 124-790 of the ITAA 1997).

46. The first element of the cost base of each Metcash share is worked out as a portion of the cost base of the FAL share for which it was exchanged, after reducing that cost base by so much of it that is attributable to the right in relation to the Tax Receivable (subsections 124-785(2) and (3) of the ITAA 1997). The first element of the reduced cost base is calculated similarly (subsection 124-785(4) of the ITAA 1997).

## **Explanation**

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**Disposal of FAL shares to Metcash Trading**

47. CGT event A1 (section 104-10 of the ITAA 1997) happens if there is a change in the ownership of an asset from one entity to another. This event happens when a contract to dispose of the asset is entered into or, if there is no contract, when the change of ownership occurs (subsection 104-10(3) of ITAA 1997).

48. The time when CGT event A1 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain (subsection 104-10(3) of the ITAA 1997).

49. The Addendum to Taxation Determination TD 2002/4 indicates that a takeover or merger effected by a court approved scheme of arrangement does not involve a disposal of shares under a contract.

50. CGT event A1 therefore happens to all FAL shareholders when the FAL shares are transferred to Metcash Trading on the Transfer Implementation Date.

51. The time of the CGT event A1 is also relevant in determining the capital proceeds received for each FAL share. The capital proceeds from a CGT event are the money and market value of any property received or entitled to be received, worked out at the time the event happens (subsection 116-20(1) of the ITAA 1997).

52. FAL shareholders must therefore determine the market value of a Metcash share at the time they dispose of their FAL shares. The Commissioner will accept the closing price of a Metcash share on the Australian Stock Exchange on the date that the shareholder disposed of their FAL shares as the market value provided that the closing price does not significantly vary from the trading values in such shares over the course of the day. Metcash will provide to FAL shareholders the value to be used as soon as practicable after that date.

53. If the tax dispute with the Commissioner of Taxation in relation to the Tax Receivable is not settled before the Consideration Determination Date under the Transfer Scheme, FAL shareholders must determine the value of the right in relation to the Tax Receivable. FAL and Metcash will seek an independent valuation of this right at the completion of the Transfer Scheme and advise FAL shareholders of that valuation as soon as practicable after that date.

#### **Time of acquisition of replacement interest**

54. As the Metcash shares will not be acquired by a FAL shareholder under a contract, they are taken to be acquired when they are issued or allotted (item 2 in the table in section 109-10 of the ITAA 1997).

55. For CGT discount purposes, Metcash shares are taken to be acquired at the time the FAL share for which it was exchanged was acquired if the shareholder has chosen scrip for scrip roll-over in respect of their FAL share (item 2 in the table in subsection 115-30(1) of the ITAA 1997).

#### **Availability of scrip for scrip roll-over**

56. Subdivision 124-M contains a number of conditions regarding the eligibility of a shareholder to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to this arrangement are outlined below.

#### ***Subparagraph 124-780(1)(a)(i) requires an entity (a FAL shareholder) to exchange a share in a company for a share in another company***

57. This requirement will be satisfied by a FAL shareholder who receives a share in Metcash as consideration for the disposal of their FAL share under the Transfer Scheme. Only partial roll-over will be available for those shareholders who receive Metcash shares and the right in relation to the Tax Receivable (see paragraphs 78 to 81). Roll-over will not be available where a FAL shareholder chooses to receive the Metcash Cash Consideration (cash or cash and the right to the Tax Receivable).

***Paragraph 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an entity (FAL – the original entity) be exchanged in consequence of a single arrangement that results in another entity (Metcash Trading – the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (FAL)***

58. In the context of the scrip for scrip provisions, the acquisition of FAL shares by Metcash Trading under the Transfer Scheme is considered to be a single arrangement.

59. The only issued shares in FAL are ordinary shares. These shares satisfy the definition of 'voting share' in section 995-1 of the ITAA 1997.

60. If the Transfer Scheme proceeds, Metcash Trading will acquire 100% of the voting shares in FAL and therefore this requirement is satisfied.

***Paragraphs 124-780(1)(b) and 124-780(2)(b) requires that the exchange of shares is in consequence of a single arrangement in which at least all owners of voting shares in the original entity (FAL) (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate***

61. This requirement will be satisfied because all the owners of shares in FAL are entitled to participate in the Transfer Scheme. If the Transfer Scheme is approved, all FAL shareholders will be required to participate.

***Paragraphs 124-780(1)(b) and 124-780(2)(c) requires that the exchange 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 (FAL)***

62. This requirement will be satisfied as all of the ordinary shareholders in FAL are entitled to participate in the Transfer Scheme on the same terms.

63. The issue of Metcash shares to a Metcash agent on behalf of overseas FAL shareholders does not prevent the arrangement from being on substantially the same terms for all owners of shares in FAL, as those shareholders are entitled to elect to receive Metcash shares under the terms of the Transfer Scheme.

***Paragraphs 124-780(1)(c) and 124-780(3)(a) require the original interest holder (a FAL shareholder) to have acquired its original interest (FAL shares) on or after 20 September 1985***

64. Roll-over will only be available for those FAL shares that were acquired on or after 20 September 1985. Paragraph 40(a) limits this Ruling in this regard.

***Paragraphs 124-780(1)(c) and 124-780(3)(b) require that, apart from the roll-over, the original interest holder (a FAL shareholder) would make a capital gain from a CGT event happening in relation to its original interest (its FAL shares)***

65. Whether a FAL shareholder would, apart from the roll-over, make a capital gain from the disposal of any of their shares to Metcash Trading is a question of fact that is dependent on the specific circumstances of each shareholder – in particular, on the cost base of each FAL share and the value of the capital proceeds received. Paragraph 40(b) limits this Ruling in this regard.

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

66. This requirement will be satisfied as the FAL shareholders receive shares in Metcash. Metcash is the ultimate holding company of the wholly owned group of which Metcash Trading is a member.

***Paragraphs 124-780(1)(c) and 124-780(3)(d) require that the original interest holder (a FAL shareholder) chooses the roll-over, or if section 124-782 applies to it for the arrangement, it and the replacement entity jointly choose to obtain the roll-over***

67. Whether a shareholder chooses to obtain roll-over in relation to the disposal of a FAL share is a question of fact.

***Subsection 124-780(4) of the ITAA 1997 provides that the additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a FAL shareholder) and the acquiring entity (Metcash Trading) did not deal with each other at arm's length and:***

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

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

69. Paragraph 124-780(4)(b) does not apply as FAL and Metcash Trading will not be members of the same linked group just before the arrangement commences.

#### **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 FAL shareholder) might make from their replacement interest (a Metcash share) would be disregarded***

70. Whether the capital gain arising because of the disposal of a FAL share is disregarded under another provision of the ITAA 1997 (for example, the shareholder holds their FAL shares as trading stock) is a question of fact.

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

71. This exception will not apply as Metcash Trading is not a foreign resident.

**Consequences of roll-over**

72. Scrip for scrip roll-over enables a shareholder to disregard all or part of a capital gain from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange. The cost base of the replacement share is determined by apportioning on a reasonable basis the cost base of the original share which is exchanged for it (subsections 124-785(2) and 124-785(4) of the ITAA 1997).

73. If the only capital proceeds the shareholder receives are replacement shares, the capital gain is disregarded completely (subsection 124-785(1) of the ITAA 1997). All of the cost base of the original shares can be allocated to the replacement shares (subsection 124-785(2) of the ITAA 1997).

74. If the shareholder receives other capital proceeds as well as the replacement shares, the capital gain is disregarded in part (subsection 124-790(1) of the ITAA 1997). Only a portion of the cost base of the original share can be allocated to the replacement shares (subsections 124-785(2), 124-785(3) and 124-785(4) of the ITAA 1997).

75. Under the Transfer Scheme, FAL shareholders may receive a combination of Metcash shares and the right in relation to the Tax Receivable in respect of their original interests in FAL.

**Consequences of roll-over where only Metcash shares are received**

76. If the Tax Receivable issue has been resolved before the Consideration Determination Date under the Transfer Scheme, the Metcash Share Consideration paid to FAL shareholders will consist only of Metcash shares and a FAL shareholder can choose to roll-over all of the capital gain arising from the disposal.

77. The cost base and reduced cost base of the FAL shares will form the first element of the cost base of the Metcash shares (subsections 124-785(2) and 124-785(4) of the ITAA 1997).

**Consequences of roll-over where both Metcash shares and the right in relation to the Tax Receivable are received**

78. If the Metcash Share Consideration paid to FAL shareholders in respect of their original interests in FAL consists of Metcash shares and the right in relation to the Tax Receivable, a FAL shareholder can choose only a partial roll-over. Roll-over will not be available to the extent that the capital gain is attributable to the right in relation to the Tax Receivable (ineligible proceeds) (subsection 124-790(1) of the ITAA 1997).

79. In calculating the capital gain attributable to their ineligible proceeds, a FAL shareholder should deduct from the value of those proceeds a reasonable portion of the cost base of their FAL share (just before its disposal to Metcash Trading) (subsection 124-790(2) of the ITAA 1997).

80. In making a reasonable apportionment of the cost base of a FAL share, it would be appropriate for a shareholder to consider the value of the ineligible proceeds (the right in relation to the Tax Receivable) and the Metcash shares on the date that CGT event A1 happens to their FAL share. As noted in paragraph 53, FAL and Metcash will seek an independent valuation of this right at the completion of the Transfer Scheme and advise FAL shareholders of that valuation as soon as practicable after that date.

81. The cost base and reduced cost base of the FAL shares, reduced by that portion that is taken into account in working out the capital gain in respect of the ineligible proceeds, will form the first element of the cost base of Metcash shares (subsections 124-785(2), 124-785(3) and 124-785(4) of the ITAA 1997).

## Example

82. The following example provides guidance for shareholders to work out the capital gains consequences if they choose roll-over in respect of the disposal of their FAL shares to Metcash Trading.

83. The example shows how to work out:

- a capital gain attributable to the ineligible proceeds (the right in relation to the Tax Receivable) they received; and
- the first element of the cost base of their replacement Metcash shares.

84. Where a FAL shareholder works out the first element of the cost base of their Metcash shares in accordance with the approach adopted in the example, the Commissioner will accept that this represents a reasonable attribution of the cost base of each Metcash share. However, it is recognised that this approach may not give the only reasonable attribution.

85. *Jacob acquired 300 shares in FAL for \$4,500 in September 2001. On 10 November 2005, the Demerger Scheme and Transfer Scheme became effective. On 24 November 2005, FAL shares are transferred to Metcash Trading under the Transfer Scheme. Jacob received 621 Metcash shares and the right in relation to the Tax Receivable.*

86. *Assuming that after the demerger a FAL share represented 30% of its original market value, its cost base would be \$1,350. The market value of a Metcash share on 24 November 2005 (Transfer Implementation Date) is \$4. FAL and Metcash advise Jacob of the value of the right in relation to each Tax Receivable per FAL share previously held.*

**Capital gain attributable to ineligible proceeds**

87. Jacob chooses roll-over to apply to the extent he is able to. Jacob works out the capital gain from the ineligible proceeds (the right to the Tax Receivable) using the following formula:

**Scenario A**

**The right in relation to a tax receivable is valued at one cent per FAL share (the lower end of the possible valuation)**

$$\begin{aligned}
 \text{Ineligible proceeds} &= 300 \times \$0.01 \\
 &= \$3 \\
 \text{Total proceeds} &= \$3 + (621 \times \$4) \\
 &= \$2,487 \\
 \text{Capital gain} &= \text{Ineligible proceeds} - \text{cost base of ineligible part} \\
 \text{Cost base of ineligible part} &= \text{Cost base of FAL shares} \times (\text{Ineligible proceeds} / \text{Total proceeds}) \\
 &= \$1,350 \times \$3 / 2,487 \\
 &= \$1.63 \\
 \text{Capital gain} &= \$3.00 - \$1.63 \\
 &= \$1.37
 \end{aligned}$$

**Cost base of Metcash shares**

88. The first element of the cost base of Jacob's Metcash shares is determined by reference to the cost base of his FAL shares that was not taken into account in working out the capital gain Jacob made in respect of the ineligible proceeds. The cost base of Jacob's Metcash shares will therefore be:

$$\begin{aligned}
 \text{Cost base of FAL shares} &= \$1,350.00 \\
 \text{Cost base attributable to ineligible proceeds} &= \$1.63 \text{ (taken into account above)} \\
 \text{First element of cost base of each Metcash share} &= (\$1,350.00 - \$1.63) / 621 \\
 &= \$2.17
 \end{aligned}$$

89. *The first element of the reduced cost base of Jacob's Metcash shares will be calculated in a similar manner.*

**Scenario B**

***The right in relation to a tax receivable is valued at twenty one cents per FAL share (the upper end of the possible valuation)***

$$\begin{aligned}
 \text{Ineligible proceeds} &= 300 \times \$0.21 \\
 &= \$63 \\
 \text{Total proceeds} &= \$63 + (621 \times \$4) \\
 &= \$2,547 \\
 \text{Capital gain} &= \text{Ineligible proceeds} - \text{cost} \\
 &\quad \text{base of ineligible part} \\
 \text{Cost base of ineligible part} &= \text{Cost base of FAL shares} \times \\
 &\quad (\text{Ineligible proceeds} / \text{Total} \\
 &\quad \text{proceeds}) \\
 &= \$1,350 \times \$63 / 2,547 \\
 &= \$33.39 \\
 \text{Capital gain} &= \$63.00 - \$33.39 \\
 &= \$29.61
 \end{aligned}$$

**Cost base of Metcash shares**

90. *The first element of the cost base of Jacob's Metcash shares is determined by reference to the cost base of his FAL shares that was not taken into account in working out the capital gain Jacob made in respect of the ineligible proceeds. The cost base of Jacob's Metcash shares will therefore be:*

$$\begin{aligned}
 \text{Cost base of FAL shares} &= \$1,350 \\
 \text{Cost base attributable to} &= \$33.39 \text{ (taken into account} \\
 \quad \text{ineligible proceeds} &\quad \text{above)} \\
 \text{First element of cost base of} &= (\$1,350 - \$33.39) / 621 \\
 \quad \text{each Metcash share} &= \$2.12
 \end{aligned}$$

91. *The first element of the reduced cost base of Jacob's Metcash shares will be calculated in a similar manner.*

## Detailed contents list

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

	<b>Paragraph</b>
<b>What this Class Ruling is about</b>	<b>1</b>
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Class of persons	3
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Time of acquisition of replacement interest	39
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<b>Explanation</b>	<b>47</b>
Disposal of FAL shares to Metcash Trading	47
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Availability of scrip for scrip roll-over	56
<i>Subparagraph 124-780(1)(a)(i) requires an entity (a FAL shareholder) to exchange a share in a company for a share in another company</i>	57
<i>Paragraph 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an entity (FAL – the original entity) be exchanged in consequence of a single arrangement that results in another entity (Metcash Trading – the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (FAL)</i>	58

<i>Paragraphs 124-780(1)(b) and 124-780(2)(b) requires that the exchange of shares is in consequence of a single arrangement in which at least all owners of voting shares in the original entity (FAL) (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate</i>	61
<i>Paragraphs 124-780(1)(b) and 124-780(2)(c) requires that the exchange 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 (FAL)</i>	62
<i>Paragraphs 124-780(1)(c) and 124-780(3)(a) require the original interest holder (a FAL shareholder) to have acquired its original interest (FAL shares) on or after 20 September 1985</i>	64
<i>Paragraphs 124-780(1)(c) and 124-780(3)(b) require that, apart from the roll-over, the original interest holder (a FAL shareholder) would make a capital gain from a CGT event happening in relation to its original interest (its FAL shares)</i>	65
<i>Paragraphs 124-780(1)(c) and 124-780(3)(c) require that the replacement interest is in the acquiring entity (Metcash Trading), or the ultimate holding company of the wholly owned group which includes the acquiring entity (Metcash)</i>	66
<i>Paragraphs 124-780(1)(c) and 124-780(3)(d) require that the original interest holder (a FAL shareholder) chooses the roll-over, or if section 124-782 applies to it for the arrangement, it and the replacement entity jointly choose to obtain the roll-over</i>	67
<i>Subsection 124-780(4) of the ITAA 1997 provides that the additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a FAL shareholder) and the acquiring entity (Metcash Trading) did not deal with each other at arm's length and:</i>	
<ul style="list-style-type: none"> <li><i>• neither the original entity (FAL) nor the replacement entity (Metcash) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a) of the ITAA 1997); or</i></li> <li><i>• the original interest holder (a FAL shareholder), the original entity (FAL) and the acquiring entity (Metcash Trading) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b) of the ITAA 1997)</i></li> </ul>	68
<i>Exceptions to obtaining scrip for scrip roll-over</i>	70
<i>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 FAL shareholder) might make from their replacement interest (a Metcash share) would be disregarded</i>	70

<i>Paragraph 124-795(2)(b) of the ITAA 1997 provides that roll-over is not available if the original interest holder (a FAL shareholder) and the acquiring entity (Metcash Trading) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a FAL share), and the acquiring entity is a foreign resident</i>	71
Consequences of roll-over	72
Consequences of roll-over where only Metcash shares are received	76
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**Commissioner of Taxation**

21 September 2005

*Previous draft:*

Not previously issued as a draft

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(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)
- ITAA 1997 124-780(4)(a)
- ITAA 1997 124-780(4)(b)
- ITAA 1997 124-780(5)
- ITAA 1997 124-782
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(3)

*Related Rulings/Determinations:*

CR 2001/1; CR 2005/74;  
 CR 2005/76; TR 92/1; TR 92/20;  
 TR 97/16; TD 2002/4; TD 2002/4A

*Subject references:*

- arrangement
- capital proceeds
- CGT event
- company
- cost base
- interests
- ordinary share
- original interest
- replacement interest
- resident
- roll-over
- scrip for scrip roll-over
- share
- shareholder
- takeover

# CR 2005/75

- ITAA 1997 124-785(4)
  - ITAA 1997 124-790
  - ITAA 1997 124-790(1)
  - ITAA 1997 124-790(2)
  - ITAA 1997 124-795(2)
  - ITAA 1997 124-795(2)(a)
  - ITAA 1997 124-795(2)(b)
  - ITAA 1997 124-810
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## ATO references

NO: 2005/13438

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT event A1 -  
disposal of a CGT asset  
Income Tax ~~ Capital Gains Tax ~~ roll-overs - scrip for  
scrip

**Appendix A**  
**Glossary of Terms**

<b><i>Ruling Terminology</i></b>	<b><i>Meaning</i></b>
<i>Certain terms used in this Ruling have the same meaning as corresponding terms in the FAL Scheme Booklet in relation to the demerger and acquisition of FAL by WOW and Metcash</i>	
Consideration Determination Date	The relevant date (expected to be 2 October 2005) for determining whether an amount in relation to the dispute with the Commissioner of Taxation will be included in the Metcash Consideration
Demerger Scheme	The scheme of arrangement under which FAL will divest its New Zealand operations
Metcash Cash Consideration	The cash to be paid to FAL shareholders for the transfer of their FAL shares to Metcash Trading. The consideration is expected to be \$6.33 per FAL share (\$6.41, subject to various adjustments)
Metcash Share Consideration	Metcash shares to be issued to FAL shareholders for the transfer of their FAL shares to Metcash Trading. The consideration is expected to be 2.07 Metcash shares per FAL share subject to adjustment (2.09 shares, subject to various adjustments)
Tax Receivable	An amount to be received from the Tax Office by FAL if FAL is successful in an income tax dispute with the Tax Office
Transfer Implementation Date	The date on which the transfer of FAL shares to Metcash and PEH shares to Woolworths takes place
Transfer Scheme	The scheme of arrangement for the transfer of FAL shares to Metcash and for the transfer of PEH shares to Woolworths
Woolworths Action Stores	'Action' branded supermarkets and associated liquor stores in NSW, Queensland and WA as well as development sites in Queensland and WA