


CR 2008/44 - Income tax: scrip for scrip roll-over: merger of Zinifex Limited and Oxiana Limited

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Class Ruling

Income tax: scrip for scrip roll-over: merger of Zinifex Limited and Oxiana Limited

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	12
Ruling	23
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	26
Appendix 2:	
<i>Detailed contents list</i>	42

① This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 124-780 of the ITAA 1997;
- section 124-790 of the ITAA 1997; and
- subsection 124-795(2) of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies consists of the ordinary shareholders of Zinifex Limited (Zinifex) who:

- dispose of their Zinifex shares under a scheme in relation to the acquisition of Zinifex by Oxiana Zinifex Holdings Pty Ltd;
- are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on the Implementation Date of the scheme;
- hold their Zinifex shares on capital account at that time; and
- are not eligible to have any capital gain or capital loss made under the scheme (on any Zinifex shares that were acquired under an employee share scheme) disregarded under Subdivision 130-D.

In this Ruling, a shareholder belonging to the class of entities is referred to as a 'Zinifex shareholder'.

Qualifications

4. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 22 of this Ruling.

5. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

7. This Ruling applies from 1 July 2008 to 30 June 2009. However, the Ruling continues to apply after 30 June 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

8. 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 issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The following description of the scheme is based on documents and information provided by the applicant PricewaterhouseCoopers. These documents include the following:

- Merger Implementation Agreement dated 2 March 2008;
- Class ruling application dated 28 March 2008; and
- Explanatory Memorandum: For the scheme of arrangement in relation to the proposed merger of Zinifex Limited and Oxiana Limited (the Explanatory Memorandum).

Note: certain information has been provided by the applicant on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

Overview

13. Oxiana Limited (Oxiana) and Zinifex are both public companies listed on the Australian Securities Exchange. Under the Zinifex Scheme (the Scheme) they propose to merge their businesses, creating a new major diversified base and precious metals mining company with global capability.

Oxiana

14. Oxiana is a widely held entity with approximately 63,949 shareholders and 1,545,427,293 ordinary shares on issue as at 20 February 2008. Oxiana Zinifex Holdings Pty Ltd is a wholly owned subsidiary of Oxiana.

Zinifex

15. Zinifex is a widely held entity with approximately 39,673 shareholders and 486,911,284 ordinary shares on issue as at 1 October 2007. These ordinary shares are the only shares on issue in Zinifex. All of the Zinifex shares were acquired by Zinifex shareholders on or after 20 September 1985.

16. Zinifex will have at least 300 members just before the Scheme is implemented.

The acquisition of Zinifex shares

17. Under the Scheme, Oxiana Zinifex Holdings Pty Ltd will acquire all of the ordinary shares in Zinifex. As consideration for the acquisition of each Zinifex share, a Zinifex shareholder will receive 3.1931 Oxiana shares.

18. The shares issued as consideration will be in Oxiana, which is the ultimate holding company of the wholly owned group of companies of which Oxiana Zinifex Holdings Pty Ltd is a member.

19. On completion of the Scheme, approximately half of the Oxiana shares will be owned by the original Zinifex shareholders.

Ineligible foreign Zinifex shareholder

20. An Ineligible Foreign Zinifex Shareholder is defined in the Explanatory Memorandum as a Zinifex shareholder whose address, as shown on the Zinifex Register is a place outside Australia and its external territories, New Zealand, the United States of America or the United Kingdom unless Oxiana and Zinifex are each satisfied, acting reasonably, that:

- (a) it is lawful, under any one or more relevant jurisdiction, and not unduly onerous to issue an Ineligible Foreign Zinifex Shareholder with Oxiana shares when the Scheme becomes effective; and

- (b) it is lawful, under any one or more relevant jurisdiction for that Ineligible Foreign Zinifex Shareholder to participate in the Scheme.

21. A person who is an Ineligible Foreign Zinifex Shareholder on the Scheme Record Date will not receive shares in Oxiana under the Scheme (as described in the Explanatory Memorandum). Instead, the shares in Oxiana that would otherwise have been issued to them under the Scheme will be issued to a nominee in accordance with the procedures outlined in the Explanatory Memorandum. The nominee will sell the shares on behalf of, and remit the net proceeds of sale to, the Ineligible Foreign Zinifex Shareholders.

Other matters

22. Under this Scheme, no Zinifex shareholder will be either a 'significant stakeholder' or 'common stakeholder' within the meaning of those terms in Subdivision 124-M.

Ruling

CGT event A1 will happen on the disposal of Zinifex shares

23. CGT event A1 will happen when a Zinifex shareholder disposes of a Zinifex share to Oxiana Zinifex Holdings Pty Ltd on the Implementation Date under the Scheme (section 104-10).

Choosing scrip for scrip roll-over

24. If a Zinifex shareholder makes a capital gain from the disposal of their Zinifex share, scrip for scrip roll-over can be chosen, subject to the qualification in paragraph 25 of this Ruling (sections 124-780 and 124-790).

25. Scrip for scrip roll-over cannot be chosen if any capital gain the Zinifex shareholder might make from the Oxiana shares would be disregarded, except because of a roll-over (subsection 124-795(2)).

Commissioner of Taxation

25 June 2008

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

CGT event A1 happens on the disposal of Zinifex shares

26. CGT event A1 will happen when a Zinifex shareholder disposes of a Zinifex share on the Implementation Date (subsections 104-10(1) and (2) and paragraph 104-10(3)(b)).

27. A Zinifex shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Zinifex share exceeds its cost base. The Zinifex shareholder will make a capital loss if those capital proceeds are less than the Zinifex share's reduced cost base (subsection 104-10(4)).

28. The capital proceeds for each Zinifex share will be the market value of the 3.1931 Oxiana shares received as consideration in respect of its disposal (subsection 116-20(1) and 116-40(1)).

29. The market value of an Oxiana share is worked out at the time the Zinifex shareholder disposes of the Zinifex shares. This occurs on the Implementation Date.

If a capital loss is made

30. If a Zinifex shareholder makes a capital loss from the disposal of their Zinifex shares, the amount of the capital loss is taken into account in working out the shareholder's net capital gain or net capital loss for the income year in which the CGT event happens (sections 102-5 and 102-10).

31. A Zinifex shareholder who makes a capital loss on a Zinifex share cannot choose scrip for scrip roll-over for that share (subsection 124-780(3)).

If a capital gain is made

32. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the circumstances of the Scheme are:

- (a) shares are exchanged for shares in another company;
- (b) the exchange occurs as part of a single arrangement;
- (c) conditions for roll-over are satisfied;
- (d) further conditions are not applicable or are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

33. Subject to the qualification in paragraph 35 of this Ruling, the Commissioner considers that the Scheme meets these conditions.

34. If a Zinifex shareholder makes a capital gain from the disposal of their Zinifex share, scrip for scrip roll-over can be chosen, subject to the qualification in paragraph 35 of this Ruling (sections 124-780 and 124-790).

35. Scrip for scrip roll-over cannot be chosen if any capital gain the Zinifex shareholder might make from the Oxiana shares would be disregarded, except because of a roll-over (subsection 124-795(2)).

Discount capital gain

36. A Zinifex shareholder who makes a capital gain where roll-over is not, or cannot be chosen can treat the amount of those gains as 'discount capital gains' provided that the conditions of Subdivision 115-A are met.

Cost base of Oxiana shares

37. The method for calculating a Zinifex shareholder's cost base and reduced cost base of the Oxiana shares received under the Scheme depends on whether the shareholder chooses scrip for scrip roll-over.

Scrip for scrip roll-over is not chosen

38. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the shareholder's cost base and reduced cost base of each Oxiana share is equal to the market value of the property (that is, the part of the Zinifex share) given in exchange for the Oxiana share (subsections 110-25(2) and 110-55(2)).

Scrip for scrip roll-over is chosen

39. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each Oxiana share is determined by taking the part of the cost base of the relevant Zinifex share that is reasonably attributable to the acquisition of the Oxiana share (subsections 124-785(2) and 124-785(4)).

Acquisition date of Oxiana shares

40. Where scrip for scrip roll-over is not chosen, the acquisition date for Zinifex shareholders of Oxiana shares acquired in exchange for their Zinifex shares is the date that the Oxiana shares are issued to the Zinifex shareholder being the Implementation Date (section 109-10).

CR 2008/44

41. However where scrip for scrip roll-over is chosen, for the purposes of applying the CGT discount to any later disposal of their Oxiana shares, Zinifex shareholders are taken to have acquired their Oxiana shares when they acquired the corresponding Zinifex shares (item 2 of the table in subsection 115-30(1)).

Appendix 2 – Detailed contents list

42. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	12
Overview	13
Oxiana	14
Zinifex	15
The acquisition of Zinifex shares	17
<i>Ineligible foreign Zinifex shareholder</i>	20
Other matters	22
Ruling	23
CGT event A1 will happen on the disposal of Zinifex shares	23
Choosing scrip for scrip roll-over	24
Appendix 1 – Explanation	26
CGT event A1 happens on the disposal of Zinifex shares	26
If a capital loss is made	30
If a capital gain is made	32
<i>Discount capital gain</i>	36
Cost base of Oxiana shares	37
<i>Scrip for scrip roll-over is not chosen</i>	38
<i>Scrip for scrip roll-over is chosen</i>	39
Acquisition date of Oxiana shares	40
Appendix 2 – Detailed contents list	42

References

Previous draft:

Not previously issued as a draft

Subject references:

- arrangement
- CGT capital proceeds
- CGT cost base
- CGT event
- CGT event A1 – disposal of a CGT Asset
- ordinary shares
- scrip for scrip roll-over
- takeovers & mergers

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(1)

- ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 116-40(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(3)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-790
 - ITAA 1997 124-795(2)
 - ITAA 1997 Subdiv 130-D
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
 - Copyright Act 1968
-

ATO references

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