


***CR 2009/31 - Income tax: scrip for scrip roll-over:
acquisition of Anzon Australia Limited by ROC Oil
Company Limited***

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Class Ruling

Income tax: scrip for scrip roll-over: acquisition of Anzon Australia Limited by ROC Oil Company Limited

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provisions 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 98 of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 99A of the ITAA 1936;
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- section 115-10 of the ITAA 1997;
- section 115-30 of the ITAA 1997;

- section 115-220 of the ITAA 1997;
- section 115-222 of the ITAA 1997;
- section 115-225 of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 116-40 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of entities to whom this Ruling applies are the shareholders in Anzon Australia Ltd (AZA) who:
- (a) disposed of their shares in AZA under the scheme to which this Ruling applies;
 - (b) held their AZA shares on capital account at the time of disposal; and
 - (c) were residents of Australia as defined in subsection 6(1) of the ITAA 1936 at the time of disposal.
4. In this Ruling, a person belonging to this class of entities is referred to as a 'participating AZA shareholder'.

Qualifications

5. 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 9 to 30 of this Ruling.
6. 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

8. This Ruling applies from 1 July 2008 to 30 June 2009. 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. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- (a) Class Ruling application dated 18 September 2008;
- (b) Bidder's Statement dated 7 August 2008;
- (c) Second Supplementary Bidder's Statement dated 9 September 2008;
- (d) Target's Statement dated 8 September 2008; and
- (e) various Australian Securities Exchange (ASX) announcements by ROC Oil Company Ltd (ROC) on 14 August 2008, 3 September 2008, 5 September 2008, 8 September 2008, 3 October 2008 and 10 October 2008.

Overview

10. The scheme that is the subject of this Ruling involves the acquisition by ROC of AZA by an off-market bid and subsequent compulsory acquisition (the takeover). Under the takeover, ROC increased its shareholding in AZA (including indirect holdings) from approximately 53% to 100%.

Relevant entities

AZA

11. AZA was, at all relevant times, an Australian resident company listed on the ASX. AZA is an upstream oil and gas company with its principal business being the development, commercialisation and further exploration of oil and gas fields in Australia and New Zealand.

12. At all relevant times:
- (a) AZA had 371,046,820 shares and 18,250,000 options on issue;
 - (b) Anzon Energy Limited (AEL) held directly and indirectly 196,824,154 shares and 7,300,000 options in AZA (approximately 53%); and
 - (c) Nexus Energy Limited held 71,274,810 of the issued shares in AZA (approximately 19%).

ROC

13. ROC is an Australian resident company listed on the ASX and the Alternative Investment Market (AIM) of the London Stock Exchange. ROC is an international oil and gas exploration and production company.

AEL

14. AEL is an Australian resident company listed on the AIM. AEL was established in 2001 for the purpose of developing oil and gas opportunities. AEL's principal asset is its shareholding in AZA.

Pre-scheme transaction

15. On 16 June 2008, the boards of ROC and AEL announced that both companies unanimously recommended a merger of the two companies. The merger was to be effected by way of a scheme of arrangement whereby ROC was to acquire all of the issued shares in AEL.

16. On 3 September 2008, AEL shareholders approved the merger of ROC and AEL. The merger was implemented on 22 September 2008 and AEL became a wholly owned subsidiary of ROC.

The takeover

17. At the time of its announcement of the proposed merger of ROC and AEL, ROC also announced an off-market takeover offer to acquire all of the ordinary shares in AZA (AZA takeover offer).

18. ROC posted its Bidder's Statement to the AZA shareholders on 13 August 2008. This was followed by one Supplementary Bidder's Statement posted to AZA shareholders on 9 September 2008.

19. Under the AZA takeover offer, ROC agreed to provide the following consideration (the scheme consideration) to AZA shareholders for each of their AZA shares:

- a cash payment of \$0.05; and
- 0.792 ROC shares.

20. Relevantly, the AZA takeover offer:

- contained a number of defeating conditions including that the AZA takeover offer would be conditional on obtaining approval from the Foreign Investment Review Board (FIRB) (section 10.8(b) of the Bidder's Statement);
- included a stipulation that only the defeating condition specified at section 10.8(b) of the Bidder's Statement was a 'condition precedent' such that the non-satisfaction of the condition would prevent the formation of a binding contract upon acceptance of the AZA takeover offer by AZA shareholders; and
- prescribed how the AZA takeover offer could be accepted by AZA shareholders (section 10.6 of the Bidder's Statement).

21. On 14 August 2008, FIRB approval was obtained. Consequently, any offer accepted under the AZA takeover became binding (section 10.9(b) of the Bidder's Statement). On 8 September 2008, the AZA takeover offer became unconditional.

22. Where an AZA shareholder became entitled to a fraction of a ROC share as a result of accepting the AZA takeover offer, any such fractional entitlement of:

- (a) less than 0.5 was rounded down to zero; or
- (b) equal to or more than 0.5 was rounded up to 1 ROC share.

23. The AZA takeover offer closed on 6 October 2008 with ROC having acquired acceptances in respect of its acquisition (including shares owned indirectly through its wholly-owned subsidiaries) of at least 90% of the AZA shares.

24. On 10 October 2008, ROC commenced a compulsory acquisition pursuant to the terms of Part 6A.1 of the *Corporations Act 2001* for those AZA shares for which it did not receive valid acceptances (the compulsory acquisition).

25. On 24 November 2008, shares held by participating AZA shareholders were transferred to ROC in exchange for the scheme consideration.

Foreign shareholders

26. Certain foreign shareholders (ineligible foreign shareholders) were not entitled to receive ROC shares pursuant to the AZA takeover offer. The ROC shares that would otherwise have been issued to those shareholders were issued to, and held by, a nominee. The nominee then sold the ROC shares on the ASX and paid the net cash proceeds to the ineligible foreign shareholders (the sale facility).

27. Other eligible shareholders who elected to accept the AZA takeover offer were also entitled to elect to have the ROC shares which they would otherwise have been entitled to receive sold instead, by the nominee under the sale facility.

Other matters

28. There were no 'significant stakeholders' or 'common stakeholders' in relation to the scheme within the meaning of those expressions in section 124-783.

29. For the purposes of subsections 124-780(4) and 124-780(5), just before the relevant arrangement started no participating AZA shareholder was a member of a linked group which included AZA and ROC.

30. All the ordinary shares in AZA were acquired on or after 20 September 1985.

Ruling

CGT event A1 happened on the disposal of the AZA shares

31. CGT event A1 happened as a result of the disposal by an AZA shareholder of each AZA share to ROC (subsections 104-10(1) and 104-10(2)).

32. Where an AZA shareholder accepted the AZA takeover offer, CGT event A1 happened on the day that the AZA shareholder entered into the contract to dispose of their AZA shares to ROC (paragraph 104-10(3)(a)).

33. AZA shareholders entered into a contract to dispose of their AZA shares on the later of the date when they accepted the AZA takeover offer or 14 August 2008.

34. Where an AZA shareholder did not accept the takeover offer, and their shares were compulsorily acquired, CGT event A1 happened when ROC became the owner of the relevant AZA shares (24 November 2008) (subsection 104-10(6)).

Capital gain or capital loss

35. An AZA shareholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an AZA share exceeded its cost base. The capital gain is equal to the amount of the excess. An AZA shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the AZA share (subsection 104-10(4)). The capital loss is equal to the amount of the difference.

Capital proceeds

36. The capital proceeds for the disposal of each AZA share is the sum of:

- (a) \$0.05; and
- (b) that part of the total market value of a ROC share received (worked out as at the time that CGT event A1 happened to the AZA shareholder) as is reasonably attributable to the disposal of the AZA share (subsections 116-20(1) and 116-40(1)).

37. In working out the market value of the part of a ROC share that is reasonably attributable to the disposal of each AZA share the Commissioner accepts the following formula:

$$\text{Market Value of ROC share} \times \frac{\text{Total number of ROC shares received}}{\text{Total number of AZA shares exchanged}}$$

38. For shareholders who accepted the offer up to and including 14 August 2008 the Commissioner will accept the closing price of a ROC share on the ASX on 14 August 2008 as representing the market value of the share.

39. For shareholders who accepted the offer between 15 August 2008 and 6 October 2008, the Commissioner will accept the closing price on the ASX of a ROC share (on the date that CGT event A1 happened to the AZA shareholder) as the market value of a ROC share received, provided that the closing price does not vary by more than 5% from either the minimum or maximum traded price over the course of the day. If the closing price does vary by more than 5% the Commissioner will accept the volume-weighted average price (VWAP) for the shares over the day as representing the market value of the share for that day.

40. For shareholders whose shares were compulsorily acquired on 24 November 2008, the Commissioner will accept the VWAP of the ROC shares traded on the ASX on that day. ROC has provided the Commissioner with the relevant prices (see Appendix 2 at paragraph 57 of this Ruling).

If a capital gain is made***Capital gain referable to ROC shares – partial scrip for scrip roll-over***

41. Subject to the qualification in paragraph 42 of this Ruling, an AZA shareholder who made a capital gain from the disposal of their AZA shares may choose partial scrip for scrip roll-over from the disposal of their AZA shares (section 124-790).

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

43. If scrip for scrip rollover is chosen, that part of the capital gain that is referable to the receipt of ROC shares is disregarded (subsection 124-790(1)).

Capital gain referable to cash

44. The part of the capital gain that is referable to the receipt of cash is not disregarded. This is because the cash received is ineligible proceeds under subsection 124-790(1).

45. The part of the capital gain on an AZA share that is referable to the receipt of cash is the ineligible proceeds (\$0.05) less the part of the cost base of the AZA share reasonably attributable to the receipt of cash. In working out the part of the cost base of an AZA share that is reasonably attributable to the receipt of cash, the Commissioner accepts the following formula:

$$\begin{array}{rcl} \text{Cost base of AZA share} & & \\ \text{reasonably attributable} & & \\ \text{to receipt of cash} & = & \text{Cost base of} \\ & & \text{the AZA} \\ & & \text{share at the} \\ & & \text{time of the} \\ & & \text{CGT event} \end{array} \times \frac{\$0.05}{(\$0.05 + \text{The market value of the part of a ROC share that is reasonably attributable to the disposal of the AZA share})}$$

Discount capital gain

46. AZA shareholders who received ROC shares and made capital gains that are not disregarded (that is, capital gains relating to the cash consideration and capital gains where scrip for scrip roll-over is not chosen) are eligible to treat any resulting capital gain as a 'discount capital gain' provided that:

- the AZA shareholder is an individual, complying superannuation entity or, subject to paragraph 47 of this Ruling, a trust (section 115-10);
- the capital gain has been calculated using a cost base that has been calculated without reference to indexation at any time; and
- the AZA shares had been held for at least 12 months before the CGT event.

47. Where the AZA shareholder is a trust, sections 115-220, 115-222 and 115-225 of the ITAA 1997 apply where the trustee is assessed under paragraph 98(3)(b), subsection 98(4) or section 99A of the ITAA 1936.

Cost base of ROC shares

48. The method for calculating an AZA shareholder's cost base and reduced cost base of the ROC shares received under the scheme depends on whether the shareholder chooses scrip for scrip roll-over.

Scrip for scrip roll-over is not chosen

49. Where scrip for scrip roll-over is not chosen, the first element of the AZA shareholder's cost base and reduced cost base of each ROC share is equal to the market value of the part of the AZA shares given in exchange for the ROC share (subsections 110-25(2) and 110-55(2)).

Scrip for scrip roll-over is chosen

50. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each new ROC share is equal to the part of the cost bases of the AZA shares exchanged for the relevant ROC share (that is, the part of the cost base of the AZA shares that does not relate to the cash consideration received) (subsections 124-785(2) and 124-785(4)).

Acquisition date of ROC shares

51. AZA shareholders acquired their ROC shares:

- when they entered into the contract to dispose of their AZA shares by accepting the takeover offer; or
- if their AZA shares were acquired by ROC by way of compulsory acquisition, when they became the owner of the ROC shares (on 24 November 2008) (item 2 of the table in section 109-10).

52. However, for the purposes of determining if a capital gain made on any later disposal of their ROC shares is a discount capital gain, AZA shareholders who choose scrip for scrip roll-over under the AZA takeover offer are taken to have acquired their ROC shares when they acquired the corresponding AZA shares (item 2 in the table in subsection 115-30(1)).

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.*

53. The tax consequence and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

54. The significant tax consequence is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables a shareholder to disregard 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. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

55. 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 this scheme are:

- (a) shares in a company 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.

56. Under the takeover offer the conditions for roll-over under Subdivision 124-M are satisfied. Further, it is considered that all of the other issues discussed in the Ruling part of this document require no further explanation beyond that contained in that part.

Appendix 2 – Relevant closing price or VWAP of a ROC share on the ASX

57. The following is a list of the relevant closing price or VWAP(*) of a ROC share on the ASX during the offer period and on the date of compulsory acquisition. This list has been compiled based on information that has been provided to the Commissioner by ROC. As such, the Commissioner does not guarantee its accuracy.

Date	Relevant closing price or VWAP(*) of a ROC share on the ASX
14 August 2008	\$1.180
15 August 2008	\$1.180
18 August 2008	\$1.130
19 August 2008	\$1.105
20 August 2008	\$1.115
21 August 2008	\$1.085 *
22 August 2008	\$1.110
25 August 2008	\$1.150 *
26 August 2008	\$1.145
27 August 2008	\$1.110
28 August 2008	\$1.145
29 August 2008	\$1.190
1 September 2008	\$1.180
2 September 2008	\$1.190
3 September 2008	\$1.170
4 September 2008	\$1.160
5 September 2008	\$1.090
8 September 2008	\$1.118 *
9 September 2008	\$1.135
10 September 2008	\$1.105
11 September 2008	\$1.120
12 September 2008	\$1.100
15 September 2008	\$1.065
16 September 2008	\$1.010
17 September 2008	\$0.905 *
18 September 2008	\$0.870
19 September 2008	\$0.949 *
22 September 2008	\$1.080
23 September 2008	\$1.105
24 September 2008	\$1.110
25 September 2008	\$1.134 *
26 September 2008	\$1.149 *
29 September 2008	\$1.143 *
30 September 2008	\$1.034 *
1 October 2008	\$1.031 *
2 October 2008	\$0.952 *
3 October 2008	\$0.928 *
6 October 2008	\$0.900
24 November 2008	\$0.603 *

Appendix 3 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- arrangement
- CGT capital proceeds
- CGT event A1
- CGT events
- CGT cost base
- CGT roll-over relief
- disposal of shares
- market value cost base
- ordinary share
- schemes of arrangement
- scrip for scrip roll-over
- shareholders

Legislative references:

- | | |
|-----------------------|---------------------------------|
| - ITAA 1936 6(1) | - ITAA 1997 104-10(3)(a) |
| - ITAA 1936 98 | - ITAA 1997 104-10(4) |
| - ITAA 1936 98(3)(b) | - ITAA 1997 104-10(6) |
| - ITAA 1936 98(4) | - ITAA 1997 109-10 |
| - ITAA 1936 99A | - ITAA 1997 110-25 |
| - ITAA 1997 | - ITAA 1997 110-25(2) |
| - ITAA 1997 104-10 | - ITAA 1997 110-55 |
| - ITAA 1997 104-10(1) | - ITAA 1997 110-55(2) |
| - ITAA 1997 104-10(2) | - ITAA 1997 115-10 |
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| | - ITAA 1997 Subdiv 124-M |
| | - ITAA 1997 124-780(4) |
| | - ITAA 1997 124-780(5) |
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| | - ITAA 1997 124-785(2) |
| | - ITAA 1997 124-785(4) |
| | - ITAA 1997 124-790 |
| | - ITAA 1997 124-790(1) |
| | - ITAA 1997 124-795(2) |
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ATO references

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Income Tax ~~ Capital Gains Tax ~~ roll-overs – scrip for scrip