

CR 2012/103 - Income tax: scrip for scrip: exchange of shares in Aon Corporation for shares in Aon plc

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Class Ruling

Income tax: scrip for scrip: exchange of shares in Aon Corporation for shares in Aon plc

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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 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 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 109-10 of the ITAA 1997;
- section 115-30 of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is the shareholders of Aon Corporation (Aon shareholders) who:

- acquired their common stock in Aon Corporation (Aon shares) on or after 20 September 1985;
- participated in the reorganisation as detailed in paragraphs 12 to 15 of this Ruling;
- held their Aon shares on capital account at the time of the reorganisation;
- were residents of Australia for the purposes of section 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at all relevant times and were not considered temporary residents for tax purposes;
- were not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions in subdivision 124-M at the time of the reorganisation; and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Aon shares.

(Note - Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them).

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

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 15 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 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 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:

- Class Ruling application dated 6 July 2012; and
- Aon Corporation Proxy Statement (adopted 16 March 2012).

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

Aon Corporation

10. Aon Corporation Australia Limited is part of the Aon group of companies and, prior to the reorganisation on 2 April 2012 described below, the ultimate parent company of this group was Aon Corporation.

11. At that time, Aon Corporation was a US company listed on the New York Stock Exchange.

Reorganisation

12. In January 2012, Aon Corporation announced that as a result of a reorganisation of the Aon group corporate structure its headquarters would move from Chicago to London, and its place of incorporation would be moved from Delaware to the United Kingdom.

13. On 16 March 2012, at a special meeting of the Aon shareholders, the Agreement and Plan of Merger and Reorganisation (Merger Agreement) was approved by Aon shareholders. On 2 April 2012, and in accordance with the Merger Agreement, Aon Corporation became a wholly owned subsidiary of Aon plc, the new United Kingdom holding company.

14. As a result of the reorganisation Aon shareholders received one Class A ordinary share in Aon plc (Aon plc share) in exchange for each Aon share held in Aon Corporation.

15. The steps under the reorganisation were as follows:

- Aon Corporation formed Aon plc as its wholly-owned subsidiary;
- Aon Corporation deposited the Aon plc shares with EES Trustees International Limited or an affiliated nominee (EES). Aon Corporation and EES entered into a depositary agreement governing the deposit of the Aon plc shares with EES;
- Aon Corporation formed Aon Intermediate as its wholly-owned subsidiary;
- Aon Intermediate formed Aon Mergeco as its wholly owned subsidiary;
- Conditional upon the approval of the Merger Agreement:
 - Aon Corporation contributed all of its interests in the Aon plc shares to Aon Intermediate; and
 - Aon Intermediate contributed all of its interests in the Aon plc shares to Aon Mergeco;
- Upon approval of the Merger Agreement, Aon Corporation contributed all shares of Aon Intermediate to Aon plc;
- Aon Mergeco and Aon Corporation merged and upon merger each issued and outstanding Aon share was converted into a right to receive one Aon plc share; and
- Aon Mergeco caused the Aon plc shares to be delivered to the Aon Corporation shareholders pursuant to the merger.

Ruling

CGT event C2

16. CGT event C2 happened when each Aon share held by a participating Aon shareholder was cancelled under the scheme described in the Ruling (subsection 104-25(1)).

17. The time of the event was the date when the Aon shares were cancelled as part of the reorganisation being 2 April 2012 (subsection 104-25(2)).

Capital gain or capital loss

18. A participating Aon shareholder made a capital gain from CGT event C2 happening if the capital proceeds from each cancelled Aon share was more than its cost base. The capital gain is the amount of the excess (subsection 104-25(3)).

19. A participating Aon shareholder made a capital loss if the capital proceeds from each cancelled Aon share was less than its reduced cost base. The capital loss is the amount of the difference (subsection 104-25(3)).

20. The capital proceeds for each cancelled Aon share was the market value of the Aon plc share received in respect of CGT event C2 happening, worked out at the time of the CGT event being 2 April 2012 (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over if a capital gain is made

21. Subject to the qualification in paragraph 22, a participating Aon shareholder who made a capital gain from an Aon share being cancelled is eligible to choose scrip for scrip roll-over under Subdivision 124-M (section 124-780). Scrip for scrip roll-over is not available for a capital loss.

22. Scrip for scrip roll-over cannot be obtained if any capital gain a participating Aon shareholder might make from the replacement Aon plc share would be disregarded (except because of a roll-over) (paragraph 124-795(2)(a)).

If scrip for scrip roll-over is chosen

23. If scrip for scrip roll-over is chosen, the capital gain a participating Aon shareholder made on their Aon share being cancelled is disregarded (subsection 124-785(1)).

Cost base of Aon plc share if scrip for scrip roll-over is chosen

24. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of the replacement Aon plc share is worked out by reasonably attributing to it the cost base of the corresponding Aon share (subsections 124-785(2) and 124-785(4)).

25. Accordingly, if scrip for scrip roll-over is chosen, the first element of the cost base (or reduced cost base) of each Aon plc share received as a result of the scrip for scrip transaction will be equal to the cost base of the Aon share exchanged for the relevant Aon plc share.

Acquisition date of Aon plc shares

26. A participating Aon shareholder acquired their Aon plc share on 2 April 2012 being the date the share was issued to each participating Aon shareholder as part of the reorganisation (item 2 of the table in section 109-10).

27. However, for the purposes of determining whether a capital gain made from any later disposal of their Aon plc share is eligible to be treated as a discount capital gain, a participating Aon shareholder who chooses scrip for scrip roll-over is taken to have acquired their Aon plc share when they acquired the corresponding Aon share (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation

28 November 2012

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.*

28. The Ruling section details the tax consequences and the relevant legislative provisions that relate to this scheme.

29. The significant tax consequence is the availability of scrip for scrip roll-over under Subdivision 124-M. Scrip for scrip roll-over enables a shareholder to disregard a capital gain made from a share that is disposed of as part of a corporate takeover or scheme of arrangement if the shareholder receives a replacement share in the exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

30. 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 that are relevant to this scheme are:

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

31. Under the scheme, the conditions for a participating Aon shareholder to be eligible to choose scrip for scrip roll-over under Subdivision 124-M are satisfied.

Appendix 2 – Detailed contents list

32. 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:

- CGT capital proceeds
- CGT cost base Ordinary shares
- CGT discount
- CGT events
- CGT roll-over relief
- Disposal of shares
- Market value cost base
- Schemes of arrangement
- Scrip for scrip roll-over

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 104-25
- ITAA 1997 104-25(1)
- ITAA 1997 104-25(2)
- ITAA 1997 104-25(3)
- ITAA 1997 109-10
- ITAA 1997 115-30
- ITAA 1997 115-30(1)
- ITAA 1997 116-20
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(2)(a)
- TAA 1953
- Copyright Act 1968

Legislative references:

- ITAA 1936

ATO references

NO: 1-42RLYFS

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ roll-overs – scrip for scrip