


# ***CR 2012/33 - Income tax: scrip for scrip: Restructure of Astron Limited***

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## Class Ruling

### Income tax: scrip for scrip: Restructure of Astron Limited

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#### **ⓘ 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

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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:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (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 112-30 of the ITAA 1997;
  - Subdivision 115-A of the ITAA 1997;
  - Subdivision 115-C of the ITAA 1997;

- section 116-20 of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997;
- section 124-780 of the ITAA 1997;
- section 124-783 of the ITAA 1997;
- section 124-785 of the ITAA 1997;
- section 124-795 of the ITAA 1997;
- section 124-800 of the ITAA 1997; and
- section 124-810 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 are shareholders (Astron shareholders) of Astron Limited (Astron) who hold ordinary shares in Astron (Astron shares) and who:

- (a) hold their Astron shares on capital account;
- (b) dispose of their Astron shares to Astron Corporation Limited (Astron HK) in exchange for ordinary shares in Astron HK (Astron HK Shares) or CHESS Units of Foreign Security (CUFS), which are a type of CHESS Depository Interest (CDI), over shares in Astron HK (Astron HK CUFS) under the Scheme described in this Ruling;
- (c) are Australian residents within the meaning of the term 'resident of Australia' in subsection 6(1) of the ITAA 1936;
- (d) are not temporary Australian residents within the meaning of the term 'temporary resident' in section 995-1; and
- (e) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Astron 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 arrangement 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 20 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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Barton ACT 2600

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## Date of effect

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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

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9. The following description of the scheme is based on information provided by the applicant.

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

10. Astron is an Australian resident public company incorporated in Australia on 22 September 1959 and the head company of a consolidated group (the Astron Group). Astron has issued ordinary shares listed on the Australian Securities Exchange (ASX). Astron has no other share categories, options, rights or similar interests on issue.

11. Astron will enter into a Scheme under Part 5.1 of the *Corporations Act 2001* (Cth) under which all shares held in Astron on the Record Date will be transferred to Astron HK in return for Astron HK shares or Astron HK CUFS.

12. Prior to the share transfer on implementation of the Scheme, Astron HK will be admitted to the ASX's official list. Following implementation of the Scheme, Astron will delist from the ASX.

## **Key steps**

13. Astron HK has been incorporated as a wholly owned subsidiary of Astron.

14. Under the Scheme, Astron shareholders will receive, at their election, two Astron HK CUFS or two Astron HK shares for every Astron share they hold at the Record Date.

15. Astron HK will also buy back the nominal capital that it initially issued to Astron.

16. Astron HK CUFS will be traded on the ASX.

## **Foreign Astron shareholders**

17. Astron shareholders with a registered address in New Zealand or Hong Kong will also receive, at their election, two Astron HK CUFS or two Astron HK shares for every Astron share they hold at the Record Date. All other foreign Astron shareholders will not receive Astron HK CUFS or Astron HK Shares. The Astron HK CUFS to which such shareholders would have otherwise been entitled will be issued to a nominee appointed by Astron HK who will sell the Astron HK CUFS and distribute the proceeds to the relevant foreign Astron shareholders after deducting any relevant fees and costs of sale.

## **Other matters**

18. The Record Date will be 15 May 2012. The Implementation Date will be 21 May 2012.

19. All Astron shareholders covered by this Ruling are 'common stakeholders' (sections 124-783 and 124-810). The Information Memorandum for the Scheme was accompanied by a form which each Astron shareholder may complete and return to Astron HK to notify Astron HK of the cost base of their original interest. If an Astron shareholder intends to obtain the scrip for scrip roll-over, they will be required to complete and return this form.

20. All parties are dealing at arm's length.

## **Ruling**

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### **CGT event A1**

21. CGT event A1 happens as a result of the disposal by an Astron shareholder of their Astron shares to Astron HK (subsections 104-10(1) and (2)).

22. The time of the event is when the Astron shares are transferred to Astron HK on the Implementation Date (paragraph 104-10(3)(b)).

### **Capital gain or loss**

23. An Astron shareholder makes a capital gain when CGT event A1 happens if the capital proceeds from the disposal of each Astron share exceed its cost base. An Astron shareholder makes a capital loss if the capital proceeds are less than the reduced cost base of the Astron share (subsection 104-10(4)).

### **Capital proceeds**

24. The capital proceeds from the disposal of each Astron share are the market value, worked out at the time that the CGT event A1 happens, of the two Astron HK CUFS or the two Astron HK shares received (paragraph 116-20(1)(b)).

### **Scrip for scrip roll-over**

25. Subject to the qualification in the following paragraph, an Astron shareholder who makes a capital gain from the disposal of an Astron share to Astron HK is eligible to choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

26. Scrip for scrip roll-over cannot be chosen if any capital gain the Astron shareholder might make from their Astron HK CUFS or Astron HK shares would be disregarded (except because of a roll-over) (paragraph 124-795(2)(a)).

27. The only capital proceeds received by an Astron shareholder are Astron HK CUFS or Astron HK shares. Therefore, if an Astron shareholder chooses scrip for scrip roll-over, the capital gain they make upon the disposal of an Astron share to Astron HK is disregarded (subsection 124-785(1)).

### **Discount capital gain**

28. An Astron shareholder who makes a capital gain where roll-over is not chosen, or cannot be chosen, may treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivisions 115-A and, if applicable, 115-C are satisfied.

## **Cost base of Astron HK shares**

29. The method for calculating an Astron shareholder's cost base and reduced cost base of the Astron HK CUFS or the Astron HK shares depends on whether the shareholder chooses scrip for scrip roll-over.

30. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the Astron shareholder's cost base and reduced cost base of each Astron HK CUFS or Astron HK share is equal to the market value of the Astron share that is exchanged for the Astron HK CUFS or Astron HK share. The market value of the Astron share is worked out at the time of the acquisition of the Astron HK CUFS or Astron HK share on the Implementation Date (subsections 110-25(2), 110-55(2) and section 112-30).

31. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each Astron HK CUFS or Astron HK share is the cost base and reduced cost base of the relevant Astron share that is exchanged for the Astron HK CUFS or the Astron HK share (subsections 124-785(2) and 124-785(4)).

## **Common stakeholders**

32. Since all Astron shareholders covered by this Ruling are common stakeholders (sections 124-783 and 124-810), each Astron shareholder, in order to obtain roll-over, must elect with Astron HK to obtain the roll-over (paragraph 124-780(3)(d)) and must comply with the disclosure conditions in paragraph 124-780(3)(e).

## **Acquisition date of Astron HK shares**

33. The acquisition date of the Astron HK CUFS and the Astron HK shares received in exchange for the Astron shares is the date that the Astron HK CUFS and the Astron HK shares are issued to the Astron shareholders (item 2 of the table in section 109-10).

34. However, for the purpose of determining whether a capital gain made from any later disposal of their Astron HK CUFS or Astron HK shares is eligible to be treated as a 'discount capital gain', Astron shareholders who choose scrip for scrip roll-over are taken to have acquired their Astron HK CUFS or Astron HK shares when they acquired the corresponding Astron shares (item 2 of the table in subsection 115-30(1)).

## **Astron shares acquired before 20 September 1985**

35. Any capital gain or capital loss made on the disposal of an Astron share acquired before 20 September 1985 (pre-CGT Astron share) is disregarded (paragraph 104-10(5)(a)).

36. There is no scrip for scrip roll-over for Astron shares that were acquired before 20 September 1985 (paragraph 124-780(3)(a)).

37. The first element of the cost base (and reduced cost base) for an Astron HK CUFS or an Astron HK share acquired in exchange for a pre-CGT Astron share is the market value of the replacement Astron HK CUFS or Astron HK share just after it was acquired on the Implementation Date (subsection 124-800(1)).

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**Commissioner of Taxation**

23 May 2012

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## Appendix 1 – Explanation

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**ⓘ** *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.*

### Availability of scrip for scrip roll-over

38. The tax consequences arising from and the relevant legislative provisions concerning the scheme are outlined in the Ruling part of this document.

39. The significant tax consequence that is the subject of this Ruling 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.

40. 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 requirements that are relevant to the scheme that is the subject of this Ruling 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.

41. All Astron shareholders covered by this Ruling are common stakeholders (section 124-783) and the exclusion in subsection 124-783(5) for widely held companies does not apply due to the application of the concentrated ownership provisions in section 124-810. In the circumstances of this Ruling, section 124-782 has application and the restructure provisions in sections 124-784A and 124-784B do not apply.

42. Under the scheme, the conditions for roll-over are satisfied and the Ruling section explains the Commissioner's decision.

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10; TD 2002/4

*Subject references:*

- Capital Gains Tax

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 104-10
- ITAA 1997 109-10
- ITAA 1997 110-25
- ITAA 1997 110-55

- ITAA 1997 112-30
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 Subdiv 115-C
  - ITAA 1997 116-20
  - ITAA 1997 Subdiv 124-M
  - ITAA 1997 124-780
  - ITAA 1997 124-783
  - ITAA 1997 124-785
  - ITAA 1997 124-795
  - ITAA 1997 124-800
  - ITAA 1997 124-810
  - TAA 1953
  - Copyright Act 1968
  - Corporations Act 2001
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ATO references

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