


CR 2016/28 - Income tax: Atlassian Corporation Plc Depositary Programs and conversion of Atlassian Corporation Plc shares

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Class Ruling

Income tax: Atlassian Corporation Plc Depositary Programs and conversion of Atlassian Corporation Plc shares

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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 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 6-10 of the ITAA 1997
- section 104-10 of the ITAA 1997
- section 104-25 of the ITAA 1997
- section 104-55 of the ITAA 1997
- section 104-60 of the ITAA 1997
- section 104-75 of the ITAA 1997, and
- section 104-155 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise noted.

Class of entities

3. The class of entities to which this Ruling applies are the holders of Unregistered Depositary Shares issued by the Bank of New York Mellon which represent an absolute entitlement to shares in Atlassian Corporation Plc ('Atlassian') ('BNY Depositary Interest Holder'), and holders of Depositary Receipts issued by Computershare Trustees (Jersey) Limited which represent an absolute entitlement to shares in Atlassian ('Computershare Depositary Interest Holder') and who:

- are resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at all relevant times
- hold their Atlassian shares (as represented by the Depositary Interest) neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, broadly they were held on capital account
- do not hold their Depositary Interest jointly, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their beneficially held Atlassian 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 his ruling 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 8 to 29 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.

Date of effect

7. This Ruling applies from 30 November 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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

8. The following description of the scheme is based on information provided by the applicant for the Class Ruling. The Commissioner has relied on that information in making this Class Ruling.

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

9. Atlassian is a company incorporated in England and Wales and tax resident in the UK.

10. Atlassian's issued share capital as of 17 November 2015 was as follows:

- (a) 3,251,160 Class A Ordinary Shares of US\$0.10 each
- (b) 140,756,840 Class B Ordinary Shares of US\$0.10 each
- (c) 2 Class B Ordinary Shares of US\$3.2828 which were issued as part of the incorporation of the company (the 'Incorporation Shares')
- (d) 12,387,798 Series A Preference Shares of US\$0.10 each
- (e) 15,046,180 Series B Preference Shares of US\$0.10 each, and
- (f) 17,235,019 Restricted Shares of US\$0.10 each.

Termination of BNY Depositary Arrangement

11. Prior to 30 November 2015, the legal owner of Atlassian's shares (other than the Incorporation Shares) was a depositary in the UK, being a nominee of the Bank of New York Mellon ('BNY Depositary'). The BNY Depositary created Unregistered Depositary Shares to the BNY Depositary Interest Holders, which represented the underlying shares in Atlassian legally held by the BNY Depositary. These interests were evidenced by Unregistered Depositary Receipts physically issued to the BNY Depositary Interest Holders. At all times when the BNY Depositary legally held shares in Atlassian, the BNY Depositary Interest Holders had absolute entitlement to the Atlassian shares.

12. On 30 November 2015, the legal title to the shares then held by the BNY Depositary was transferred to a depositary located in Jersey, being a nominee of Computershare Trustees (Jersey) Limited ('Computershare Depositary'). That is, there was a change in Depositary and trustee (and therefore nominee) which held legal title to the shares.

13. The Computershare Depositary holds the underlying securities as bare trustee on behalf of the beneficiaries of the trust (that is, the beneficial owners of the shares in Atlassian, being the Depositary Interest Holders). The Computershare Depositary created Depositary Receipts, which are evidenced by a certificate.

14. Under the Computershare Depositary Arrangement, Holders will continue to have an absolute entitlement to corresponding shares in Atlassian. Immediately prior to the issue of the Depositary Receipts by the Computershare Depositary, the Depositary Shares created by the BNY Depositary were cancelled and the relevant Depositary Receipts issued by the BNY Depositary were deemed null and void.

Conversion of Atlassian shares and IPO

15. Atlassian undertook an Initial Public Offering ('IPO') of its Class A Ordinary Shares and was admitted to trading on the NASDAQ stock exchange on 10 December 2015.

16. Immediately prior to the IPO, rights attaching to Series A Preference Shares and Restricted Shares were varied to become Class A Ordinary Shares. Rights attaching to the Series B Preference Shares were varied to become Class B Ordinary Shares.

17. A summary of the rights of each class of shares before and after the IPO is set out in the table below:

Equity Class	Number of votes per share	Rights to dividends	Upon IPO, rights varied to equal:
Class A Ordinary Shares	1	Pari passu	n/a
Class B Ordinary Shares	10	Pari passu	n/a
Series A Preference shares	nil	Pari passu	Class A ordinary shares
Series B Preference shares	10	Pari passu	Class B ordinary shares
Restricted shares	nil	None	Class A ordinary shares

18. Following the IPO only Class A Ordinary Shares and Class B Ordinary Shares remain outstanding.

Termination of the Computershare Depositary Arrangement and implementation of the DTC Depositary Arrangement

19. In order to list the existing Class A Ordinary Shares on the NASDAQ stock exchange and allow electronic trading and settlement of the Atlassian shares, the Computershare Depositary program will be terminated in relation to the existing Class A Ordinary Shares on the Lock Up date or the Early Lock Up Release date (where applicable), and a new Depositary Arrangement implemented for this class of share.

20. The IPO involved the primary issuance by Atlassian of 22,000,000 Class A Ordinary Shares to several underwriters. These shares were issued by Atlassian directly to the nominee ('Cede & Co.') of the relevant clearing house, being The Depositary Trust Company ('DTC' or the 'DTC Depositary'). The IPO also involved the sale by certain holders of depositary receipts of the Class A Ordinary Shares underlying such receipts, pursuant to the over-allotment option granted to several underwriters. The total shares subject to the over-allotment option was 3,300,000.

21. The existing Class A Ordinary Shares (other than any shares sold pursuant to the over-allotment option) are subject to contractual restrictions on transfer for a period of up to 180 days after the IPO ('the Lock Up date'), however some Class A Ordinary Shares held by non-officer employees may be available for transfer at an earlier date subject to certain conditions ('Early Lock Up Release date').

22. On the Lock Up date, or the Early Lock Up Release date (where applicable), legal title to the existing Class A Ordinary Shares will be transferred from the Computershare Depositary to the DTC Depositary.

23. The transfer of legal title will be at the direction of the Holders. Beneficial ownership of the shares will not change and Holders will maintain absolute entitlement to the Atlassian shares throughout the transfer.

24. Any new Class A Ordinary Shares issued by Atlassian after the Lock Up date will be issued directly to the DTC Depositary. Certain Class A Ordinary Shares issued by Atlassian prior to the Lock Up date will be issued to the Computershare Depositary, and later transferred to the DTC Depositary.

25. The Incorporation Shares are held outside of any Depositary programme and will not be issued or transferred to the DTC Depositary at any time.

26. The Class B ordinary shares will not be listed on the NASDAQ stock exchange or elsewhere and will continue to be held by the Computershare Depositary. Class B Ordinary Shares will not be issued or transferred to the DTC Depositary at any time, unless they have first been reclassified as Class A Ordinary Shares.

27. At a future date it is possible that a holder of depositary interests representing Class B Ordinary Shares will want to deposit their shares with the DTC Depositary. In such circumstances, at the election of the holder, the Class B Ordinary Shares will be reclassified into Class A Ordinary Shares. Following reclassification the Computershare Depositary will transfer legal title to the reclassified Class A Ordinary Shares to the DTC Depositary.

28. In order to allow the interests to be traded electronically on the NASDAQ stock exchange, the nominee of the DTC Depositary will be recorded as the holder of the legal title to the relevant Atlassian Class A Ordinary Shares, and on the request of the nominee, global share certificates representing the Atlassian Class A Ordinary Shares will be issued to the nominee of the DTC Depositary. The nominee of the DTC Depositary will hold the shares on its customary terms and the appropriate DTC participants (broker-dealers and banks) who hold such shares for the benefit of those persons beneficially entitled to such shares will be credited with book entry interests in respect of the shares to which they are entitled. The physical share certificates evidencing the existing Class A Ordinary Shares in Atlassian underlying the depositary interests will be surrendered to Atlassian by the Computershare Depositary.

29. At all times during the Scheme, for the purposes of section 106-50, Holders will be absolutely entitled to the Atlassian Shares they beneficially own. Additionally Holders will not receive any 'capital proceeds' (as defined in section 116-20) in respect of any of the acts, transactions or events that occur in relation to the Atlassian shares described above.

Ruling

Termination of BNY Depositary Arrangement

30. CGT events A1 (section 104-10), C2 (section 104-25), E1 (section 104-55), E2 (section 104-60) and E5 (section 104-75) did not happen to the BNY Depositary Interest Holder with the termination of the BNY Depositary Arrangement and the implementation of the Computershare Depositary Arrangement.

31. As a result, the acquisition date and the cost base and reduced cost base of a Holder's Atlassian share remain the same at that time.

32. As the BNY Depositary Interest Holder did not receive or be entitled to receive any capital proceeds in respect of the change in Depositary, the BNY Depositary Interest Holder will not make a capital gain under CGT event H2 (section 104-155).

Termination of Computershare Depositary Arrangement in relation to Class A Ordinary Shares

33. CGT events A1, C2, E1, E2 and E5 did not happen to the Computershare Depositary Interest Holder with the termination of the Computershare Depositary Arrangement and the implementation of the DTC Depositary Arrangement in relation to the Class A Ordinary Shares.

34. As a result, the acquisition date and the cost base and reduced cost base of a Holder's Atlassian share remain the same.

35. As the Computershare Depositary Interest Holder did not receive or be entitled to receive any capital proceeds in respect of the change in Depositary, the Computershare Depositary Interest Holder will not make a capital gain under CGT event H2.

Variation of rights in Atlassian shares

36. CGT events A1 and C2 did not happen to the Depositary Interest Holder when the Atlassian Series A Preference shares and the Restricted Share converted into Class A Ordinary Shares and the Atlassian Series B Preference shares converted into Class B Ordinary Shares.

37. As the Depositary Interest Holder did not receive or be entitled to receive any capital proceeds in respect of the conversion of the Atlassian Series A Preference shares and the Restricted Share into Class A Ordinary Shares and the conversion of the Atlassian Series B Preference shares into Class B Ordinary Shares, the Depositary Interest Holder will not make a capital gain under CGT event H2.

38. The conversion of Atlassian shares will not result in any assessable income being derived by the Holders under section 6-5 or section 6-10.

Commissioner of Taxation11 May 2016

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.*

Termination of Depositary Arrangements

39. Under section 106-50, a CGT asset of a trust to which a beneficiary is absolutely entitled as against the trustee (disregarding any legal disability) is treated for CGT purposes as being the beneficiary's asset (rather than an asset of the trust). Furthermore, any act done in relation to the asset by the trustee is taken to be done by the absolutely entitled beneficiary (rather than the trustee).

40. The Commissioner's views in respect of the meaning of the words 'absolutely entitled to a CGT asset as against the trustee of a trust' as used in Parts 3-1 and 3-3 is contained in Draft Taxation Ruling TR 2004/D25.

41. Under each of the BNY Depositary, the Computershare Depositary, and the DTC Depositary arrangements in place for the Atlassian shares, the Depositary Interest Holder is absolutely entitled to the underlying Atlassian share to which the Depositary Interest relates. Accordingly the Atlassian share is taken to be the Depositary Interest Holder's asset for CGT purposes.

42. CGT event A1 happens if a taxpayer disposes of a CGT asset (subsection 104-10(1)), and the disposal involves a change of ownership from the taxpayer to another entity. However, a change of ownership does not occur if the taxpayer stops being the legal owner of the asset but continues to be its beneficial owner (subsection 104-10(2)).

43. CGT event A1 will not happen as beneficial ownership of the Atlassian share remains with the Depositary Interest Holder at all relevant times.

44. CGT event C2 happens if a taxpayer's ownership of an intangible CGT asset ends by the asset being redeemed, cancelled, released, discharged, satisfied, expiring, abandoned, surrendered or forfeited (subsection 104-25(1)).

45. CGT event C2 will not happen in respect of the Atlassian share as the Depositary Interest Holder's beneficial ownership of the Atlassian share does not end as a result of the change in Depositary Arrangements.

46. CGT event E1 happens when a taxpayer creates a trust over a CGT asset by declaration or settlement (subsection 104-55(1)). CGT event E2 happens when a taxpayer transfers a CGT asset to an existing trust (subsection 104-60(1)). However, subsection 104-55(5) and subsection 104-60(5) respectively provide that CGT events E1 and E2 do not happen if the taxpayer is the sole beneficiary of the trust and is absolutely entitled to the asset as against the trustee (disregarding any legal disability) and the trust is not a unit trust.

47. CGT event E5 happens if a beneficiary becomes absolutely entitled to a CGT asset of a trust (except a unit trust or a trust to which Division 128 applies) as against the trustee (disregarding any legal disability the beneficiary is under) (section 104-75).

48. CGT events E1, E2 and E5 will not happen as the Depositary Interest Holder has always been absolutely entitled to the Atlassian share.

49. CGT event H2 happens if an act, transaction or event occurs in relation to a CGT asset and the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base (section 104-155). A capital gain is made if the 'capital proceeds' from the event are more than the incidental costs incurred in relation to it; a capital loss is made if the capital proceeds are less than the incidental costs (section 104-155).

50. Capital proceeds are the money or other consideration received, or entitled to be received, because of the act, transaction or event (subsection 116-20(2)). Paragraph 29 of Taxation Ruling TR 95/3 provides that 'consideration' for these purposes can include the benefit of mutual promises flowing to parties even if those promises are not in themselves property.

51. The Depositary Interest Holder did not receive or be entitled to receive any capital proceeds in respect of the change in Depositary. Therefore the Depositary Interest Holder will not make a capital gain as they will not receive capital proceeds.

Variation of rights in Atlassian shares

52. As a Depositary Interest Holder is absolutely entitled to the underlying Atlassian share to which the Depositary Interest relates such that the share is taken to be the asset of Depositary Interest Holder, the variation of rights in Atlassian shares is taken to happen to the Depositary Interest Holder for CGT purposes.

53. Taxation Ruling TR 94/30 sets out the Commissioner's view on whether a variation to any of the rights (e.g. voting or dividend rights) attaching to a share results in a CGT event happening. This includes the conversion of one class of share into another class by way of the variation of rights attaching to the share.

54. Paragraphs 8 and 9 of TR 94/30 provide that the variation of rights attaching to a share does not result in the full disposal of an asset for the purposes of Part IIIA of the ITAA 1936 unless there is a cancellation or redemption of the share. Nor does it result in a part disposal of an asset. Effectively the asset (the share) continues to exist albeit with different rights attached to it.

55. CGT event A1 happens if a taxpayer disposes of a CGT asset (subsection 104-10(1)), and the disposal involves a change of ownership from the taxpayer to another entity. However, a change of ownership does not occur if the taxpayer stops being the legal owner of the asset but continues to be its beneficial owner (subsection 104-10(2)).

56. CGT event A1 did not happen when the Atlassian share rights were varied as this did not involve a change of ownership of the share from the Depositary Interest Holder to another entity as beneficial ownership of the Atlassian share remains with the Depositary Interest Holder at all relevant times.

57. CGT event C2 happens if a taxpayer's ownership of an intangible CGT asset ends by the asset being redeemed, cancelled, released, discharged, satisfied, expiring, abandoned, surrendered or forfeited (subsection 104-25(1)).

58. CGT event C2 did not happen when the Atlassian share rights were varied as this did not involve a cancellation or redemption of the share. The Depositary Interest Holder's ownership of the Atlassian share did not end as a result of variation in rights.

59. Paragraph 10 of TR 94/30 provides that a variation in rights for money or other consideration may give rise to a deemed disposal under subsection 160M(7) of the ITAA 1936 where the other requirements of the subsection are met. That subsection has been rewritten as CGT event H2.

60. CGT event H2 happens if an act, transaction or event occurs in relation to a CGT asset and the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base (section 104-155). A capital gain is made if the 'capital proceeds' from the event are more than the incidental costs incurred in relation to it; a capital loss is made if the capital proceeds are less than the incidental costs (section 104-155).

61. Capital proceeds are the money or other consideration received, or entitled to be received, because of the act, transaction or event (subsection 116-20(2)). Paragraph 29 of Taxation Ruling TR 95/3 provides that 'consideration' for these purposes can include the benefit of mutual promises flowing to parties even if those promises are not in themselves property.

62. The Depositary Interest Holder did not receive or be entitled to receive any capital proceeds in respect of the variation of rights in the Atlassian shares. Therefore the Depositary Interest Holder will not make a capital gain under CGT event H2 from the variation of rights in the Atlassian shares as they did not receive capital proceeds.

Appendix 2 – Detailed contents list

63. 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 94/30; TR 95/3; TR 2006/10;
TR 2004/D25

Legislative references:

- TAA 1953
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 6-5
 - ITAA 1997 6-10
 - ITAA 1997 Pt 3-1
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-25
 - ITAA 1997 104-25(1)
 - ITAA 1997 104-55
 - ITAA 1997 104-55(1)
 - ITAA 1997 104-55(5)
 - ITAA 1997 104-60
 - ITAA 1997 104-60(1)
 - ITAA 1997 104-60(5)
 - ITAA 1997 104-75
 - ITAA 1997 104-155
 - ITAA 1997 104-155(3)
 - ITAA 1997 106-50
 - ITAA 1997 116-20
 - ITAA 1997 116-20(2)
 - ITAA 1997 Pt 3-3
 - ITAA 1997 Div 128
 - ITAA 1997 Div 230
 - ITAA 1997 Pt 3-1
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
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ATO references

NO: 1-7T90XQD

ISSN: 2205-5517

ATO law topic: Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events – general
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