

CR 2016/70 - Income tax: scrip for scrip roll-over: merger of OneVue Holdings Limited and Diversa Limited

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Class Ruling

Income tax: scrip for scrip roll-over: merger of OneVue Holdings Limited and Diversa 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

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 provisions

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

- section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- subsection 104-10(1) of the ITAA 1997
- subsection 104-10(3) of the ITAA 1997
- subsection 104-10(4) of the ITAA 1997
- subsection 110-25(2) of the ITAA 1997
- subsection 110-55(2) of the ITAA 1997
- subsection 115-30(1) of the ITAA 1997
- subsection 116-20(1) of the ITAA 1997, and

- Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies are the former holders of ordinary shares in Diversa Limited (Participating Diversa Shareholders) who:

- are 'residents of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* and are not considered temporary residents as that term is defined in subsection 995-1(1)
- were not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their Diversa Limited (Diversa) shares
- acquired their ordinary shares in Diversa (Diversa shares) on or after 20 September 1985
- held their Diversa shares on capital account
- apart from the roll-over, would have made a capital gain in relation to the disposal of their Diversa shares under the scheme to which this Ruling relates, and
- choose scrip for scrip roll-over relief in respect of the capital gain that would otherwise have been made in relation to the disposal of their Diversa shares.

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 26 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 1 July 2016 to 30 June 2017. The Ruling continues to apply after 30 June 2017 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 description of the scheme is set out below and is based upon 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.

Diversa

9. Diversa was the head company of an Australian resident income tax consolidated group. It was publicly listed on the Australian Securities Exchange (ASX).

10. Diversa was one of Australia's leading independent retail superannuation trustees.

11. At the date of the Scheme Booklet, Diversa had the following securities on issue:

- 59,768,607 Diversa shares held by approximately 834 Diversa shareholders
- 477,782 Diversa options, and
- 217,456 Diversa performance rights issued to 15 eligible employees or their nominees.

12. OneVue Holdings Limited (OneVue) agreed to acquire, subject to the Scheme of Arrangement being approved by Diversa shareholders, all Diversa options from Diversa option holders for \$0.01 prior to the Record Date.

13. Diversa took such action as was necessary to ensure that any Diversa performance rights which had not vested were cancelled and those that did vest were converted into Diversa shares prior to the Record Date.

14. At the Record Date of 29 September 2016:

- Diversa had 59,986,063 fully paid ordinary shares on issue

- Each ordinary share carried the same rights to vote, receive dividends and receive capital distributions, and
- Diversa did not have any other class of share on issue, nor any options over its shares.

OneVue

15. OneVue is the head company of an Australian resident income tax consolidated group. It is publicly listed on the ASX.

16. OneVue is a financial services company.

17. Prior to the scheme, OneVue had 193,158,000 ordinary shares on issue, held by over 300 members.

The merger

18. On 14 June 2016, OneVue and Diversa announced that they had entered into a Scheme Implementation Deed under which it was proposed that OneVue would acquire all of the Diversa shares under a Scheme of Arrangement (the scheme). The scheme was subject to Diversa shareholder approval and Court approval under paragraph 411(4)(b) of the *Corporations Act 2001* (Cth).

19. The scheme received Diversa shareholder approval at a Scheme Meeting on 20 September 2016.

20. On 26 September 2016, the scheme was approved by order of the Court under paragraph 411(4)(b) of the *Corporations Act 2001* (Cth).

21. As part of this scheme, all Participating Diversa Shareholders who held Diversa shares on the Record Date (29 September 2016) received one of the following in exchange for their Diversa shares:

- 1.2375 OneVue ordinary shares for each Diversa share that they held (maximum share consideration), or
- 1.073 OneVue ordinary shares and a cash payment of \$0.10 per Diversa share that they held (maximum cash consideration).

22. Some Diversa shareholders were ineligible for the scheme and are referred to as 'ineligible overseas scheme shareholders' (ineligible shareholders). An ineligible shareholder was any Diversa shareholder with an address on the register on the Record Date outside Australia and New Zealand.

23. For ineligible shareholders, the scheme consideration was issued to a Nominee who sold the OneVue shares on-market and paid the proceeds to the ineligible shareholder.

24. The cash component of the maximum cash consideration was fully funded from cash raised in OneVue's oversubscribed December 2015/January 2016 capital raisings.

25. The despatch of scheme consideration to Participating Diversa Shareholders and transfer of Diversa shares to OneVue took place on the Implementation Date (6 October 2016).

Other matters

26. This Ruling is made on the following basis:

- participating Diversa Shareholders and OneVue dealt with each other at arm's length for the purposes of subsection 124-780(4)
- neither Diversa nor OneVue had a significant stakeholder or common stakeholder in relation the scheme within the meaning of those expressions in section 124-783
- all of the Diversa shareholders were offered the opportunity to participate in the scheme on the same terms
- no member of the wholly owned group of which OneVue is the ultimate holding company issued equity (other than the new OneVue shares) or owes new debt, under the arrangement that is the subject of this Ruling, to an entity that is not a member of the wholly-owned group, in relation to the issuing of the new OneVue shares for the purposes of paragraph 124-780(3)(f), and
- OneVue did not make a choice, or notify the Participating Diversa shareholders in writing that the roll-over under Subdivision 124-M was not available for the exchange of Diversa shares for OneVue shares (subsection 124-795(4)).

Ruling

CGT Event A1

27. CGT event A1 happened when Participating Diversa Shareholders disposed of their Diversa shares to OneVue under the terms of the scheme (section 104-10).

28. CGT event A1 happened on the Implementation Date, being Thursday 6 October 2016 (subsection 104-10(3)).

29. A Participating Diversa Shareholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Diversa share exceeded the cost base of that share. The capital gain is the amount of the excess (subsection 104-10(4)).

30. A Participating Diversa Shareholder made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a Diversa share were less than the reduced cost base of that share. The capital loss is the amount of the difference (subsection 104-10(4)).

31. The capital proceeds in respect of CGT event A1 happening were the market value of any new OneVue shares received plus any money received by the Participating Diversa shareholders as consideration for each Diversa share exchanged (subsection 116-20(1)). The market value of any new OneVue shares received was worked out as at the time of CGT event A1, which was on the Implementation Date (6 October 2016) (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over

32. A Participating Diversa Shareholders who made a capital gain from the disposal of their Diversa shares is eligible to choose scrip for scrip roll-over under Subdivision 124-M (sections 124-780 and 124-785).

Consequences of choosing Subdivision 124-M roll-over – maximum share consideration

33. If scrip for scrip roll-over is chosen, the capital gain made from the disposal of the Diversa shares to OneVue in exchange for the maximum share consideration is disregarded under subsection 124-785(1).

34. If a Participating Diversa shareholder chooses scrip for scrip roll-over, the acquisition date for each newly received OneVue share by Participating Diversa shareholders for the purposes of making a discount capital gain is the date when they acquired the Diversa shares that were exchanged for the new OneVue shares (item 2 of the table in subsection 115-30(1)).

35. The first element of the cost base (or reduced cost base) is the money you paid in respect of acquiring the CGT asset, or the market value of any other property you gave, or are required to give, in respect of acquiring it (subsection 110-25(2) and subsection 110-55(2)).

36. Subsection 124-785(2) provides that the first element of the cost base (or reduced cost base) of each OneVue share received by the Participating Diversa Shareholders under the scheme is worked out by reasonably attributing to it the cost base of the Diversa shares for which it was exchanged and for which the Participating Diversa Shareholder obtained the roll-over. As the shares are not exchanged on a one to one basis, this is allocated proportionately.

Consequences of choosing Subdivision 124-M roll-over – maximum cash consideration

37. Subsection 124-790(1) provides that the original interest holder can obtain only a partial roll-over if its capital proceeds for its original interest include something (being the ineligible proceeds) other than its replacement interest. There is no roll-over for that part (the ineligible part) of its original interest for which it received ineligible proceeds.

38. Where a Participating Diversa Shareholder chooses the maximum cash consideration, consisting of both cash and a replacement share in OneVue, it will be eligible for only a partial roll-over. If partial scrip for scrip roll-over is chosen, a Participating Diversa Shareholder who made a capital gain from the disposal of their Diversa shares to OneVue, that part of the capital gain that is referable to the receipt of cash is not disregarded because it is ineligible proceeds for which roll-over is not available.

39. Subsection 124-790(2) provides that the cost base (or reduced cost base) of the ineligible part is that part of the cost base of your original interest as is reasonable attributable to it. The cost base of each Diversa share is reduced by that part of the cost base which is reasonably attributable to the cash component of the maximum cash consideration.

40. The method to be used by Participating Diversa Shareholders to calculate that part of the cost base of the Diversa shares that is reasonably attributable to the cash consideration (ineligible part cost base) is:

$$\text{ineligible part cost base} = \frac{\text{Cost Base of Diversa Shares} \times \text{Cash Consideration}}{(\text{Market Value of OneVue shares} + \text{cash consideration})}$$

41. Participating Diversa shareholders who elect to receive the maximum cash consideration will pay capital gains tax on the disposal of their Diversa shares, to the extent that the cash proceeds, being \$0.10 per Diversa share, exceed the ineligible part.

42. The remaining cost base of the Participating Diversa shareholder's shares in Diversa will form the first element of the cost base (or reduced cost base) of the Participating Diversa shareholder's replacement shares in OneVue. As the shares are not exchanged on a one to one basis, this will be allocated proportionately.

43. The acquisition date for each newly received OneVue share by Participating Diversa shareholders for the purposes of making a discount capital gain is the date when they acquired the Diversa shares that were exchanged for the new OneVue shares (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation

12 October 2016

Appendix 1 – Explanation

● 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 if a capital gain is made

44. The main issue that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables a shareholder to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base of the replacement share.

45. 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) an entity exchanges shares in a company for shares in another company (paragraph 124-780(1)(a))
- (b) the exchange is in consequence of a single arrangement that satisfies subsection 124-780(2) or (2A)
- (c) conditions for the roll-over in subsection 124-780(3) are satisfied
- (d) further conditions, if applicable, are satisfied, and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

46. The scheme that is the subject of this Ruling satisfies the requirements for a roll-over under Subdivision 124-M for Participating Diversa shareholders receiving the maximum share consideration, and satisfies the requirements for a partial roll-over under Subdivision 124-M for Participating Diversa shareholders receiving the maximum cash consideration.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

- ITAA 1997 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(1)
- ITAA 1997 124-780(1)(a)
- ITAA 1997 124-780(2)
- ITAA 1997 124-780(2A)
- ITAA 1997 124-780(3)
- ITAA 1997 124-780(3)(f)
- ITAA 1997 124-780(4)
- ITAA 1997 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(3)
- ITAA 1997 124-790(1)
- ITAA 1997 124-790(2)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- TAA 1953
- Corporations Act 2001
- Corporations Act 2001 411(4)(b)

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 995-1(1)
- ITAA 1997
- ITAA 1997 102-5
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)
- 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 115-30(1)
- ITAA 1997 116-20(1)

ATO references

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Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base
Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip – Subdivision 124-M

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