


CR 2017/49 - Income tax: CGT roll-over - exchange of shares in Afterpay Holdings Limited for shares in Afterpay Touch Group Limited

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Class Ruling

Income tax: CGT roll-over – exchange of shares in Afterpay Holdings Limited for shares in Afterpay Touch Group Limited

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❶ 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.

Summary – 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 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - Subdivision 115-A of the ITAA 1997
 - Subdivision 124-M of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies is the shareholders of Afterpay Holdings Limited (AHL) who:

- participated in the scheme that is the subject of the Ruling

- are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (and not temporary residents as defined in section 995-1 of the ITAA 1997) on the Implementation Date of the scheme (6 July 2017)
- owned ordinary shares in AHL as at the Record Date for the scheme (3 July 2017) and held those on capital account at the time of the scheme and not as trading stock or revenue assets, and
- are not subject to the Taxation of Financial Arrangements (TOFA) under Division 230 of the ITAA 1997 in regard to their AHL 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.

Date of effect

7. This Ruling applies from 1 July 2017 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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 this 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. On 6 July 2017 (the Implementation Date), pursuant to a scheme of arrangement effected under the *Corporations Act 2001*, all shareholders of AHL transferred all their shares to a newly incorporated Australian company, Afterpay Touch Group Limited (Afterpay Touch Group), in exchange for being issued new shares in Afterpay Touch Group and nothing else.

Background

10. AHL is a company incorporated in Australia on 22 June 2015. Its shares were listed on the Australian Securities Exchange (ASX) on 4 May 2016. All of the group's activities are conducted in Australia and derives 100% of its revenues from Australian operations and customers.

11. As at 31 December 2016, there were over 1,000 holders of a total 180,337,038 ordinary shares in AHL. The largest shareholder with a holding of approximately 27.8% is Touch Australia Pty Limited, a 100% subsidiary company of Touchcorp Limited, another ASX listed company.

12. On 23 February 2017, AHL announced, in an ASX announcement, an intention to merge with Touchcorp Limited under a newly incorporated holding company, Afterpay Touch Group.

13. Afterpay Touch Group is a company that was incorporated in Australia on 30 March 2017 with nominal contributed share capital of \$2 consisting of two ordinary shares. It was incorporated for the above merger.

14. The merger was effected by both AHL and Touchcorp Limited undertaking separate schemes of arrangement under their relevant companies regulations with approval of their respective shareholders and the court.

15. The AHL scheme of arrangement was approved by a vote of its shareholders at a meeting on 19 June 2017 and was approved by the Federal Court of Australia on 28 June 2017 pursuant to paragraph 411(4)(b) of Part 5.1 of the *Corporations Act 2001*.

16. The Touchcorp Limited scheme was implemented first on 6 July 2017. The AHL scheme was also implemented on 6 July 2017 immediately after the Touchcorp Limited scheme.

17. Under the AHL scheme, on 6 July 2017 all shareholders of AHL (except for Touch Australia Pty Limited) transferred ownership of all their shares to Afterpay Touch Group, and in exchange received one new share in Afterpay Touch Group, and nothing else, for each share in AHL.

18. As a consequence of the AHL scheme and the Touchcorp Limited scheme, AHL became an, indirectly, wholly owned subsidiary company of Afterpay Touch Group.

19. Subsequently, the AHL shares were delisted from the ASX and the new shares in Afterpay Touch Group were listed on the ASX.

20. Any foreign shareholders who were ineligible to receive shares in Afterpay Touch Group under the scheme due to laws of their country, had their new shares in Afterpay Touch Group issued instead to a nominee who would then sell the shares on the ASX and pay the net proceeds to the ineligible foreign shareholders.

Ruling

Disposal of AHL shares – CGT Event A1

21. CGT event A1 happened when participating AHL shareholders exchanged their AHL shares for Afterpay Touch Group shares under the terms of the scheme (section 104-10).

22. CGT event A1 happened on the Implementation Date, being 6 July 2017 (subsection 104-10(3)).

23. A participating AHL shareholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an AHL share exceeded the cost base of that share. The capital gain is the amount of the excess (subsection 104-10(4)).

24. A participating AHL shareholder made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of an AHL share were less than the reduced cost base of that share. The capital loss is the amount of the excess (subsection 104-10(4)).

25. The capital proceeds in respect of CGT event A1 happening were the market value of any new Afterpay Touch Group shares received by the participating AHL shareholders as consideration for each AHL share exchanged (subsection 116-20(1)). The market value of any new Afterpay Touch Group shares received was worked out as at the time of CGT event A1, which was on the Implementation Date (6 July 2017) (paragraph 116-20(1)(b)).

Application of Subdivision 124-M roll-over

26. A participating AHL shareholder who makes a capital gain from the disposal of an AHL share to Afterpay Touch Group is eligible to choose scrip for scrip roll-over (section 124-780 and section 124-785).

27. Section 124-782 will not apply as no holder is a significant stakeholder or a common stakeholder. As section 124-782 does not apply, Afterpay Touch Group is not required to make a joint choice under subsection 124-780(3)(d) to allow roll-over for the AHL shareholders.

Where Subdivision 124-M roll-over is chosen

28. The only capital proceeds received by an AHL shareholder will be Afterpay Touch Group shares. Therefore, if an AHL shareholder chooses scrip for scrip roll-over, the capital gain they will make upon the disposal of an AHL share to Afterpay Touch Group in exchange for Afterpay Touch Group shares (CGT event A1) is disregarded (subsection 124-785(1)).

Where Subdivision 124-M roll-over is not chosen, or cannot be chosen

29. An AHL shareholder who does not choose roll-over, or cannot choose roll-over, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their AHL shares in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

30. An AHL shareholder who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the AHL shares must have been acquired by the shareholder at least 12 months before their disposal to Afterpay Touch Group.

Cost base and reduced cost base of new Afterpay Touch Group shares received

31. If a shareholder chooses scrip for scrip roll-over, the first element of the cost base and reduced cost base of replacement new Afterpay Touch Group shares received (in exchange for their AHL shares) is worked out by reasonably attributing the cost base and reduced cost base (respectively) of the AHL shares which were exchanged and for which the roll-over was obtained (subsections 124-785(2) and 124-785(4)).

Acquisition date of Afterpay Touch Group shares

32. For CGT purposes, an AHL shareholder acquired their Afterpay Touch Group shares on the Implementation Date of the AHL scheme (6 July 2017) (subsection 109-5(2)).

33. If an AHL shareholder chooses scrip for scrip roll-over, the acquisition date of the new Afterpay Touch Group shares for the purposes of entitlement to a discount capital gain should a subsequent CGT event happen to the Afterpay Touch Group shares (such as a disposal of the Afterpay Touch Group shares) is the date when the shareholder had acquired the AHL shares that were exchanged for the new Afterpay Touch Group shares (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation

2 August 2017

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.*

Roll-over under Subdivision 124-M

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

34. A scrip for scrip roll-over under Subdivision 124-M 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.

35. 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:

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

36. The AHL scheme satisfies the requirements for the roll-over under Subdivision 124-M.

Appendix 2 – Detailed contents list

37. 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

Legislative references:

- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-5(2)
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 116-20(1)
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 124-M
 - ITAA 1997 124-780
 - 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)(d)
 - ITAA 1997 124-782
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 Div 230
 - ITAA 1997 995-1
 - Corporations Act 2001
 - Corporations Act 2001 411(4)(b)
 - TAA 1953
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ATO references

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Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip – Subdivision 124-M

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