


***CR 2019/2 - Income tax: scrip for scrip roll-over:
acquisition of Capilano Honey Limited by Bravo
HoldCo Pty Ltd***

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Class Ruling

Income tax: scrip for scrip roll-over: acquisition of Capilano Honey Limited by Bravo HoldCo Pty Ltd

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① This publication provides you with the following level of protection:

This publication (excluding appendices) 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 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 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 110-25 of the ITAA 1997
 - section 110-55 of the ITAA 1997
 - section 112-30 of the ITAA 1997
 - section 116-20 of the ITAA 1997
 - Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is the shareholders of Capilano Honey Limited (Capilano) who:

- held their Capilano shares on the Record Date for the scheme (28 November 2018)
- participated in the scheme that is the subject of this Ruling, under which they chose to receive ordinary shares in Bravo Holdco Pty Ltd in exchange for the disposal of their Capilano shares
- are residents of Australia (within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*) and are not 'temporary residents' as defined in subsection 995-1(1)
- acquired their shares in Capilano on or after 20 September 1985
- held their shares in Capilano on capital account, that is, the shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as 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 Capilano shares.

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

4. In this Ruling, a person belonging to this class of entities is referred to as a 'Participating Shareholder'.

Qualifications

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

6. 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 31 of this Ruling.

7. 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

8. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

Scheme

9. The following description of the scheme is based on information provided by the applicant, including the application for a Class Ruling received on 17 September 2018.

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

Relevant Entities

Capilano Honey Limited (Capilano)

10. Capilano is an Australian resident company incorporated in 1953 and listed on the Australian Securities Exchange (ASX) since July 2012. Capilano undertakes a business of packing and marketing honey bee products.

11. As at 30 June 2018, approximately 0.76% of Capilano shares were held by non-resident entities.

12. As at 3 September 2018, Capilano had 9,457,481 fully-paid ordinary shares on issue. Each ordinary share carried the same rights to vote, receive dividends and receive capital distributions.

Bravo HoldCo Pty Ltd (Bravo HoldCo)

13. Bravo HoldCo Pty Ltd (Bravo HoldCo) is jointly owned by Wattle Hill RHC Fund 1 and ROC Capital Pty Ltd in its capacity as trustee of the ROC B&Y Investment Trust.

Bravo BidCo Pty Ltd (Bravo BidCo)

14. Bravo BidCo is a wholly owned subsidiary of Bravo HoldCo Pty Ltd.

15. Bravo BidCo was incorporated specifically for the purpose of the acquisition of Capilano Shares.

16. Prior to the Scheme Implementation Date, neither Bravo HoldCo, Bravo BidCo, Wattle Hill RHC Fund 1 nor ROC Capital Pty Ltd held any Capilano shares.

Acquisition of Capilano by Bravo HoldCo

17. On 13 August 2018, Capilano announced it had entered into a Scheme Implementation Agreement (SIA) with Bravo HoldCo and Bravo BidCo under which it was proposed that Bravo BidCo would acquire 100% of the share capital of Capilano pursuant to Part 5.1 of the *Corporations Act 2001*.

18. Under the terms of the SIA, a Capilano shareholder who held ordinary shares on the Record Date of 28 November 2018 could choose to receive Scheme Consideration in exchange for each Capilano share of either:

- \$20.06 per Capilano share (the Cash Consideration),
or
- one Bravo HoldCo share (the Scrip Consideration).

19. If a Capilano shareholder did not make an election by 5 November 2018 they would be treated as electing to receive Cash Consideration.

20. Capilano shareholders who elected to receive Scrip Consideration could also subscribe at \$20.06 per share for an additional 0.5 Bravo HoldCo shares for every Capilano share (Subscription Offer). Payment of the subscription price of \$20.06 was to be made at the time of the election.

21. The Scheme was subject to a scale back mechanism if Scrip Consideration elections and Subscription Offer applications collectively exceeded 49.9% of Bravo HoldCo shares, being 4,719,283 Bravo HoldCo shares.

22. Pursuant to the scale back formula set out in clause 6.8 of the Scheme of Arrangement (SOA), a Capilano shareholder who did not take up the Subscription Offer would receive in exchange for their Capilano shares either (i) a combination of a reduced number of Bravo HoldCo shares and Cash Consideration, or (ii) Cash Consideration only. Capilano shareholders who elected to receive Scrip Consideration and did take up the Subscription Offer would receive in exchange for their Capilano shares either (i) Bravo HoldCo shares, or (ii) a combination of a reduced number of Bravo HoldCo shares and Cash Consideration.

23. On 2 November 2018, Capilano announced that the Cash Consideration and Subscription Price had increased from \$20.06 to \$21.00. The Scrip Consideration did not change. Capilano shareholders could withdraw their elections and Subscription Offer applications at any time before 12pm AEDST on 13 November 2018.

24. On 14 November 2018, Capilano announced that Scrip Consideration elections and Subscription Offer applications had not collectively exceeded 4,719,283 or 49.9% of Bravo HoldCo shares and the Scheme was not subject to the scale back mechanism.

25. The SOA was subject to certain conditions precedent set out in the SIA including, but not limited to:

- shareholder approval with at least 15% of shareholders electing to receive Scrip Consideration, and
- Court approval by the Federal Court of Australia.

26. The SOA was approved by a majority of Capilano's eligible shareholders at a Scheme Meeting held on 15 November 2018.

27. Final Court approval was obtained on 23 November 2018.

28. The completion date of the Scheme was 5 December 2018 (Scheme Implementation Date).

Scheme Consideration

29. As the total number of Bravo HoldCo shares that Participating Shareholders elected to receive by way of Scrip Consideration and pursuant to the Subscription Offer did not exceed the maximum available Bravo HoldCo shares, the scale back mechanism did not apply.

30. On the Scheme Implementation Date, Participating Shareholder's transferred each share they held in Capilano to Bravo BidCo in exchange for either:

- Cash Consideration of \$21.00 per Capilano share, or
- Scrip Consideration of 1 share in Bravo HoldCo.

31. Participating Shareholders who failed to make a choice by 5 November 2018 or withdrew their elections by 12pm AEDST on 13 November 2018, were deemed to receive the Cash Consideration.

Ruling

Capital Gains Tax (CGT) consequences

CGT event A1

32. CGT event A1 happened to a Participating Shareholder when they transferred each Capilano share to Bravo BidCo under the terms of the SIA (section 104-10).

33. CGT event A1 happened on the Scheme Implementation Date, being 5 December 2018 (subsection 104-10(3)(b)).

34. The capital proceeds from CGT event A1 happening to a Capilano share is the market value of any property (Bravo HoldCo shares) received, or entitled to be received, in respect of the disposal of a Capilano share. The market value of the Bravo HoldCo shares is worked out at the time of CGT event A1, which was on the Scheme Implementation Date of 5 December 2018 (see paragraph 33 of this Ruling) (subsection 116-20(1)).

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

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

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

37. Subject to the qualification in the following paragraph, a Participating Shareholder who elected to receive Scrip Consideration and made a capital gain from the disposal of a Capilano share to Bravo BidCo is eligible to choose scrip for scrip roll-over for the Bravo HoldCo shares they received in exchange for their Capilano shares (section 124-780 and section 124-785).

38. Scrip for scrip roll-over cannot be chosen if any capital gain the Capilano shareholder made from the disposal of a Capilano share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Cost base and reduced cost base of Bravo HoldCo shares received in exchange for Capilano shares

39. The cost base and reduced cost base of a Bravo HoldCo share acquired by a Participating Shareholder in exchange for their Capilano share, is affected by whether the shareholder chooses scrip for scrip roll-over.

40. Where scrip for scrip roll-over is not chosen, the first element of the cost base and reduced cost base of each Bravo HoldCo share received in exchange for a Capilano share is equal to the market value of the Capilano share given in exchange for the acquisition of the Bravo HoldCo share (subsection 110-25(2), 110-55(2) and 112-30(1)). The market value is worked out as at the time of the acquisition (subsection 110-25(2)). The market value of the Capilano shares given by the shareholder for the receipt of Cash Consideration is not included in the cost base or reduced cost base of Bravo HoldCo shares (subsection 112-30(1)).

41. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of a replacement Bravo HoldCo share is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Capilano share for which it was exchanged for and for which the roll-over was obtained (subsections 124-785(2) and 124-785(4)). Any part of the cost base of the Capilano shares exchanged by the shareholder that relates to the receipt of Cash Consideration is not included (subsection 124-785(3)).

Commissioner of Taxation

9 January 2019

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

42. 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.

43. 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.

44. The scheme that is the subject of this Ruling satisfies the requirements for a scrip for scrip roll-over under Subdivision 124-M.

Appendix 2 – Detailed contents list

45. 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 1997 112-30(1)
 - ITAA 1997 Subdiv 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 124-785
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(3)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 116-20(1)
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
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ATO references

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

BSL: PGI

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