


# ***CR 2019/57 - Ozinca Australia Pty Ltd - scrip for scrip rollover***

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## Class Ruling

### Ozinca Australia Pty Ltd – scrip for scrip rollover

#### **❶ Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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#### **What this Ruling is about**

1. This Ruling sets out the tax consequences for Australian resident shareholders in Ozinca Australia Pty Ltd (Ozinca) who exchanged their shares for shares in Oakdale Resources Ltd (Oakdale) on 18 March 2019.
2. Full details of this scheme are set out in paragraphs 22 to 34 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

#### **Who this Ruling applies to**

4. This Ruling applies to shareholders in Ozinca who:
  - hold fully paid ordinary shares
  - participate in the scheme that is subject to this Ruling
  - were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* on the Completion Date
  - did not hold their Ozinca shares as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) that is, the shares are held broadly on capital account for tax purposes, and
  - acquired their shares in Ozinca on or after 20 September 1985.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 29 to 34 of this Ruling.

**Note:** Division 230 will not apply to individuals, unless they have made an election for it to apply.

### **When this Ruling applies**

6. This Ruling applies from 1 July 2018 to 30 June 2019.

## **Ruling**

### **CGT event A1 will happen on the disposal of Ozinca shares**

7. CGT event A1 will happen when Ozinca shareholders dispose of their Ozinca shares to Oakdale under the scheme described in this Ruling (subsection 104-10(1)).

8. The timing of the event is when the contract for the disposal of the shares in Ozinca to Oakdale was entered into (paragraph 104-10(3)(a)).

9. A shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of their Ozinca share exceed the cost base for that share. A shareholder will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of an Ozinca share were less than the reduced cost base for that share (subsection 104-10(4)).

10. The capital proceeds from CGT event A1 happening will be the market value of the Oakdale shares received, or are entitled to receive, for a shareholder disposing of their Ozinca shares (paragraph 116-20(1)(b)). The market value of the Oakdale shares is worked out as at the time the contract was entered into, being 11 January 2019.

### **Availability of scrip for scrip rollover if capital gain is made**

11. Subject to paragraph 12 of this Ruling, a shareholder who makes a capital gain from the disposal of their Ozinca shares, in exchange for Oakdale shares, is eligible to choose scrip for scrip rollover (sections 124-780 and 124-785).

12. Scrip for scrip rollover cannot be chosen if any capital gain an Ozinca shareholder might make on their replacement Oakdale shares from a subsequent CGT event would be disregarded, except because of a rollover (paragraph 124-795(2)(a)).

### **Consequences if scrip for scrip rollover is chosen**

#### ***Capital gain is disregarded***

13. If an Ozinca shareholder chooses scrip for scrip rollover, the capital gain they make upon the disposal of an Ozinca share to Oakdale is disregarded (subsection 124-785(1)). This is because an Ozinca shareholder will only receive replacement shares in Oakdale for disposing of their Ozinca shares (subsection 124-790(1)).

14. Choosing scrip for scrip rollover allows the capital gain made by the original interest holder on the disposal of their original interests to be deferred until the disposal of their replacement interests.

***Acquisition date of Oakdale shares***

15. The acquisition date of each replacement share in Oakdale is the date the shareholder acquired their original Ozinca share (table item 2 in subsection 115-30(1)).

***Cost base and reduced cost base for Oakdale shares received***

16. The first element of the cost base and reduced cost base of each replacement Oakdale share received is calculated by reasonably attributing to it the cost base and reduced cost base of the Ozinca shares for which it was exchanged (subsections 124-785(2) and (4)).

17. An Ozinca shareholder can calculate the first element of the cost base and reduced cost base of each replacement Oakdale share by dividing the aggregate cost bases or reduced cost bases of their respective shares in Ozinca by the number of replacement Oakdale shares received.

***Consequences if scrip for scrip rollover is not chosen, or cannot be chosen******Capital gain is not disregarded***

18. A shareholder who does not choose rollover, or cannot choose rollover, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their Ozinca shares in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens. A shareholder must include any net capital gain worked out in their assessable income for the income year (sections 102-5 and 102-10).

19. A shareholder who makes a capital gain can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the Ozinca shares must have been acquired by the Ozinca shareholder at least 12 months before their disposal to Oakdale.

***Acquisition date of Oakdale shares***

20. The acquisition date of each replacement share in Oakdale is 11 January 2019, the date the disposal contract was entered into (Event Number A1 (case 1) of the table in subsection 109-5(2)).

***Cost base and reduced cost base of Oakdale shares received***

21. The first element of the cost base and reduced cost base of a replacement Oakdale share received is equal to the market value of the part of each Ozinca share given in respect of acquiring the Oakdale share, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

***Scheme***

22. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

## Relevant entities

### ***Ozinca***

23. Ozinca is an Australian registered private company formed on 1 February 2017.
24. As at 25 January 2019, Ozinca had 62,103,333 ordinary shares, being the only class of shares, on issue.
25. Ozinca has no options, rights or similar instruments on issue.

### ***Oakdale***

26. Oakdale is an Australian registered public company that was registered on 11 January 1985. It has been listed on the Australian Securities Exchange since 17 December 1998.
27. As at 28 November 2018, Oakdale had 57,337,685 fully paid ordinary shares on issue.
28. Oakdale operates mining projects in Australia.

## ***Acquisition of Ozinca by Oakdale***

29. Under the Acquisition Agreement dated 11 January 2019, Oakdale agreed to purchase 100% of the shares from Ozinca shareholders.
30. The consideration for the purchase of Ozinca shares by Oakdale was 100 million fully paid tradeable shares in the capital of Oakdale, issued to the shareholders of Ozinca in the proportions of each shareholder's share ownership as set out in Schedule 1 of the Acquisition Agreement (showing share ownership of Ozinca). That is, 100 million Oakdale shares were issued to Ozinca shareholders according to the proportion of Ozinca shares they held just prior to settlement of the Acquisition Agreement. There were no other offers as part of this transaction.
31. Settlement of the Acquisition Agreement took place on 18 March 2019 (Completion Date).

## ***Other matters***

32. Ozinca and Oakdale did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.
33. All shareholders in Ozinca were given the opportunity to participate in the scheme on the same terms.
34. The shareholders of Ozinca and Oakdale dealt with each other at arm's length.

**Appendix – Explanation**

**ⓘ** *This Explanation 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.*

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**Scrip for scrip rollover**

35. Scrip for scrip rollover 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 and reduced cost base of the replacement share.

36. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being able to choose scrip for scrip rollover. 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)
- the conditions in subsection 124-780(3) are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip rollover are not applicable.

37. The Scheme that is the subject of this Ruling satisfies the requirements for rollover under Subdivision 124-M.

## 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
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(a)
- ITAA 1997 104-10(4)
- ITAA 1997 109-5(2)
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)
- 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 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-790(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

ATO references

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

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