


# ***CR 2021/41 - Xplore Wealth Limited - scheme of arrangement***

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## Class Ruling

### Xplore Wealth Limited – scheme of arrangement

#### **① 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.

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

1. This Ruling sets out the tax consequences for shareholders of Xplore Wealth Limited (Xplore) who disposed of their Xplore shares to HUB24 Limited (HUB24) on 2 March 2021 (Implementation Date) by way of a scheme of arrangement (Share Scheme).
2. Full details of this scheme are set out in paragraphs 23 to 38 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

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

4. This Ruling applies to you if you:
  - held Xplore shares and participated in the Share Scheme
  - are not exempt from Australian income tax
  - did not acquire your Xplore shares pursuant to an employee share scheme
  - acquired your Xplore shares on or after 20 September 1985, and
  - held your Xplore shares 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)).

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 23 to 38 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 to the income year in which the Implementation Date (2 March 2021) occurred.

## **Ruling**

### **CGT event A1 happened on the disposal of your Xplore Wealth Limited shares**

7. CGT event A1 happened when you disposed of your Xplore shares to HUB24 pursuant to the scheme set out in paragraphs 23 to 38 of this Ruling (section 104-10).

8. The time CGT event A1 happened was when the Xplore shares were transferred to HUB24 on the Implementation Date (paragraph 104-10(3)(b)).

9. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Xplore share exceeds the cost base of that share. You made a capital loss if the capital proceeds were less than the reduced cost base of your Xplore share (subsection 104-10(4)).

### **Capital proceeds – cash consideration for Xplore Wealth Limited shares**

10. The capital proceeds received from the CGT A1 event for the Xplore shares for which you received cash consideration was the cash payment of 20 cents per Xplore share (Cash Consideration) (paragraph 116-20(1)(a)).

### **Capital proceeds – scrip consideration for Xplore Wealth Limited shares**

11. The capital proceeds received from the CGT event A1 for the disposal of Xplore shares that were replaced with HUB24 shares is the market value (worked out at the time of the CGT event A1) of the replacement HUB24 shares received for so many of the Xplore shares for which you received scrip consideration (Scrip Consideration) (paragraph 116-20(1)(b)).

12. For the purposes of determining the market value of a HUB24 share for the capital proceeds as required in subsection 104-10(4), the Commissioner accepts that the market value of a HUB24 share on the Implementation Date was \$20.85.

### **Scrip for scrip roll-over under Subdivision 124-M availability**

13. Subject to the qualification in paragraph 14 of this Ruling, if you have made a capital gain from the disposal of Xplore shares for which you received Scrip Consideration, you may choose scrip for scrip roll-over (section 124-780).

14. Scrip for scrip roll-over cannot be chosen if any capital gain that you might make from the replacement HUB24 shares would be disregarded (except because of a roll-over) (subsection 124-795(2)).

**Consequences if you choose to apply scrip for scrip roll-over**

15. Where scrip for scrip roll-over is available to you (see paragraphs 13 and 14) and you choose to apply it, the capital gain in relation to the receipt of HUB24 shares is disregarded (subsection 124-785(1)).

16. The first element of the cost base and reduced cost base of a replacement HUB24 share received (in exchange for your original Xplore shares) is worked out by reasonably attributing the cost base and reduced cost base (respectively) of your original Xplore shares (subsections 124-785(2) and (4)).

17. The date of acquisition of these HUB24 shares for 'discount capital gain' purposes is the date you acquired your original Xplore shares (table item 2a of subsection 115-30(1)).

**Consequences when scrip for scrip roll-over does not apply to your Xplore Wealth Limited shares (whether by choice or otherwise)**

18. You must account for any capital gain or capital loss from CGT event A1 happening on the disposal of these Xplore shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

19. If you make a capital gain on these shares you can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, the Xplore shares that you disposed of must have been acquired by you at least 12 months before their disposal to HUB24 (section 115-25).

20. The first element of the cost base and reduced cost base of the replacement HUB24 share received is equal to the market value of the Xplore shares given in respect of acquiring the HUB24 share (subsections 110-25(2) and 110-55(2)). The market value of the Xplore shares is worked out as at the time of the acquisition of the HUB24 share (subsection 110-25(2)).

21. The date of acquisition of the replacement HUB24 shares is the date you were issued these shares (table item 2 of section 109-10). That is, the Implementation Date of the scheme, being 2 March 2021.

**Foreign resident Xplore Wealth Limited shareholders**

22. Shares in Xplore are not 'taxable Australian property' under table items 1, 2 or 4 of section 855-15. Therefore, an Xplore shareholder who is a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the Implementation Date, will only make a capital gain or capital loss from the disposal of shares in Xplore if the shares are a CGT asset that:

- they have used at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

**Scheme**

23. 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.

**Xplore Wealth Limited**

24. Xplore is an Australian-incorporated company that was listed on the Australian Securities Exchange (ASX) on 23 June 2014 (under their previous name Managed Accounts Holdings Limited) and delisted on 4 March 2021.

25. Xplore is a specialist managed discretionary account provider with significant funds under administration. Xplore aims to provide a broad range of platform solutions to provide real choice for advisers in managing their clients' wealth.

26. As at 2 March 2021, Xplore had 297,590,888 ordinary shares on issue.

**HUB24 Limited**

27. HUB24 is an Australian-incorporated company that was listed on the ASX on 5 July 2007.

28. HUB24 is an investment and superannuation platform service provider.

**Scheme of Arrangement**

29. On 28 October 2020, Xplore and HUB24 entered into a Scheme Implementation Agreement for HUB24 to acquire 100% of the issued share capital of Xplore by way of a Share Scheme between Xplore and its shareholders.

30. The Share Scheme was subject to certain conditions set out in the Scheme Implementation Agreement, including approval by:

- Xplore shareholders at the Share Scheme meeting by the majorities required under section 411(4)(a)(ii) of the *Corporations Act 2001*
- the Federal Court of Australia in accordance with paragraph 411(4)(b) of the *Corporations Act 2001* either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably).

31. The proposed Share Scheme consideration was based on a total value of 20 cents per Xplore share. The form of the consideration was either the Cash Consideration of 20 cents or Scrip Consideration of 0.00926746 HUB24 shares.

32. Most Xplore shareholders were able to elect to receive the Cash Consideration or Scrip Consideration subject to caps on each form of consideration. However, small Xplore shareholders would only receive Cash Consideration. Where an Xplore shareholder made no election, they would receive Cash Consideration for 50% of their shares and Scrip Consideration for the remaining 50% of their shares.

33. HUB24 did not make a choice to deny roll-over under Subdivision 124-M (subsection 124-795(4)).

34. On 12 February 2021, the requisite majority of Xplore shareholders approved the Share Scheme at the Share Scheme meeting.

35. On 18 February 2021, the Share Scheme was approved by order of the Federal Court of Australia and it was announced on the ASX that Xplore shares would be suspended from the close of trading on 19 February 2021.

36. On 24 February 2021, Xplore announced that the cap on Scrip Consideration was breached such that shareholders who elected to have Scrip Consideration will only receive Scrip Consideration for 51.86% of their shares and Cash Consideration for the remainder (that is, 48.14%).

37. On 2 March 2021, Xplore shareholders disposed of each share they held in Xplore shares to HUB24.

#### **Other matters**

38. This Ruling is made on the basis that Xplore did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme (within the meaning of those expressions in section 124-783).

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**Commissioner of Taxation**9 June 2021

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**Appendix – Explanation**

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

39. The tax consequences that arise concerning the Share Scheme are outlined in paragraphs 7 to 22 of this Ruling.

40. One consequence identified in 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 and reduced cost base of the replacement share.

41. 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 needed to be satisfied for the Share Scheme are set out in section 124-780, namely:

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

42. The Share Scheme satisfies the requirements for roll-over under Subdivision 124-M.

**Non-resident scheme shareholders**

43. Under subsection 855-10(1), an entity disregards a capital gain or capital loss from a CGT event if they are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

44. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out five categories of CGT assets summarised below:

|        |   |
|--------|---|
| Item 1 | Taxable Australian real property (TARP)   |
| Item 2 | An indirect Australian real property interest (see section 855-25) not covered by table item 5  |
| Item 3 | A CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by table items 1, 2 or 5 |
| Item 4 | An option or right to acquire a CGT asset covered by table items 1, 2 or 3  |
| Item 5 | A CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident)                     |

### **Indirect Australian real property interest**

45. Subsection 855-25(1) provides that a membership interest held by an entity in another entity at a time, is an indirect Australian real property interest at that time if the interest satisfies both the:

- non-portfolio test in section 960-195 at either time specified in subparagraphs 855-25(1)(a)(i) or (ii), and
- principal asset test in section 855-30 at that time.

46. Subsection 855-30(2) provides that a membership interest held by the holding entity in the test entity passes the principal asset test if the sum of the market values of the test entity's assets that are TARP assets exceeds the sum of the market values of its assets that are non-TARP assets.

47. The market value of Xplore's TARP assets does not exceed the market value of its non-TARP assets. Therefore, the principal asset test is not satisfied.

48. Any Xplore shareholder that satisfies the non-portfolio interest test in section 960-195 at either time specified in subparagraphs 855-25(1)(a)(i) or (ii) does not have an indirect Australian real property interest because the principal asset test is not satisfied. Therefore, any capital gain or capital loss made when CGT event A1 happened by Xplore shareholders that satisfy the non-portfolio interest test can be disregarded.



## References

### *Previous draft:*

Not previously issued as a draft

### *Legislative references:*

- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(a)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(2)
- ITAA 1997 124-780(2A)
- ITAA 1997 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(2)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 855-25(1)
- ITAA 1997 855-25(1)(a)(i)
- ITAA 1997 855-25(1)(a)(ii)
- ITAA 1997 855-30
- ITAA 1997 855-30(2)
- ITAA 1997 960-195
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 411(4)(a)(ii)
- Corporations Act 2001 411(4)(b)

### ATO references

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