


CR 2022/43 - Class Limited - partial scrip for scrip roll-over

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Status: **legally binding**

Class Ruling

Class Limited – partial scrip for scrip roll-over

📌 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 income tax consequences for the holders of ordinary shares in Class Limited (Class) in relation to the acquisition of those shares by HUB24 Limited (HUB24) on 16 February 2022 (Implementation Date).
2. Full details of this Scheme are set out in paragraphs 26 to 47 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:
 - were a holder of Class ordinary shares who participated in the scheme that is the subject of this Ruling
 - were registered on Class' share register on 9 February 2022 (Scheme Record Date)
 - held your Class shares on capital account; that is, your Class shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
 - did not acquire your Class shares pursuant to an employee share scheme (as defined in subsection 83A-10(2)).

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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 26 to 47 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 2021 to 30 June 2022.

Ruling

CGT event A1 happened on the disposal of your Class Limited shares

7. CGT event A1 happened when you disposed of each of your Class shares to HUB24 (section 104-10).

8. The time of CGT event A1 is the Implementation Date (16 February 2022) (paragraph 104-10(3)(b)).

9. The capital proceeds received from CGT event A1 happening to each Class share were the:

- Cash Consideration received, being 12.5 cents per Class share (paragraph 116-20(1)(a)), and
- Scrip Consideration received, being the market value of the replacement 0.09090909 HUB24 share you received in respect of the disposal of each of your Class shares (paragraph 116-20(1)(b)). The market value of the HUB24 shares is worked out as at the time of CGT event A1 happening.

10. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Class share exceeded the cost base of that share (subsection 104-10(4)). The capital gain is the amount of the excess.

11. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Class share were less than the reduced cost base of that share (subsection 104-10(4)). The capital loss is the difference.

Non-resident shareholders

12. If you are a non-resident shareholder just before the Implementation Date (that is, you were not a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) and your Class shares were not 'taxable Australian property' (in the manner described in paragraph 13 of this Ruling), you disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your Class shares to HUB24 (section 855-10).

13. Your Class shares were taxable Australian property if they were:

- used by you at any time in carrying on a business through a permanent establishment in Australia in the circumstances specified in table item 3 of section 855-15, or

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- a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident (table item 5 of section 855-15)).

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

14. Subject to the qualifications in paragraphs 15 and 16 of this Ruling, if you made a capital gain from the disposal of your Class shares, you may choose partial scrip for scrip roll-over under subsection 124-790(1) for that part of the capital gain that is referable to the receipt of the replacement HUB24 shares component of the Scheme Consideration (sections 124-780 and 124-790).

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

16. If you were a non-resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless your replacement HUB24 shares were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

Consequences if you choose partial scrip for scrip roll-over for your HUB24 Limited shares

Capital gain partially disregarded

17. If you choose partial scrip for scrip roll-over, the capital gain you made from the disposal of your Class share is disregarded to the extent that you received replacement HUB24 shares for the disposal of your Class share (eligible proceeds) (subsection 124-785(1)).

18. The capital gain made from the disposal of a Class share is not disregarded to the extent that you received cash for the disposal of your Class share (ineligible proceeds) (subsection 124-790(1)).

Cost base and reduced cost base of replacement HUB24 Limited share

19. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement HUB24 share received is calculated by reasonably attributing to it the cost base and reduced cost base (respectively) of your original Class share for which it was exchanged and for which the roll-over was obtained (subsection 124-785(2) and (4)). Any part of the cost base of the Class share exchanged by you that relates to the receipt of Cash Consideration is not included (subsection 124-785(3)).

Acquisition date of a replacement HUB24 Limited share

20. For the purpose of determining whether a capital gain made from any later disposal of a HUB24 share is a discount capital gain, if you choose scrip for scrip roll-over, you are taken to have acquired your HUB24 share when you acquired your original Class shares that were exchanged for the relevant HUB24 share (table item 2 of subsection 115-30(1)).

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Consequences if you do not choose, or cannot choose, partial scrip for scrip roll-over for your Class Limited shares

Capital gain or loss not disregarded

21. If you do not, or cannot, choose scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your Class shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

22. If you made a capital gain and scrip for scrip roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met.

Cost base and reduced cost base of replacement HUB24 Limited share

23. If partial scrip for scrip roll-over is not chosen or cannot be chosen, the first element of the cost base and reduced cost base of each replacement HUB24 share that you received is equal to that part of the market value of the Class shares you gave in respect of acquiring the HUB24 share (paragraph 110-25(2)(b) and subsections 110-55(2) and 112-30(1)). The market value of a Class share given by you that is attributable to the receipt of Cash Consideration is not included in the cost base or reduced cost base of a new HUB24 share (subsection 112-30(1)).

24. The market value of the Class shares you gave is to be worked out as at the time when you acquired the HUB24 share.

Acquisition date of replacement HUB24 Limited shares

25. If scrip for scrip roll-over is not chosen or cannot be chosen, you are deemed to have acquired the HUB24 shares when those shares were issued to you on 16 February 2022, being the Implementation Date (paragraph 104-35(5)(c) and table item 2 of section 109-10).

Scheme

26. 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.

Class Limited

27. Class is an Australian-resident company that was incorporated on 21 October 2005 and listed on the Australian Securities Exchange (ASX) on 18 December 2015.

28. Class is an Australian resident for tax purposes and the head company of the Class Limited tax consolidated group.

29. Class is a cloud-based technology-solutions company engaged in the simplification and automation of complex administration in the superannuation fund administration, financial services and professional services sector.

30. Just before the Scheme Implementation Deed (SID) was entered into, and just before the Implementation Date, Class had more than 300 shareholders.

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31. Class had 125,769,143 ordinary shares on issue just before the Implementation Date.
32. According to Class' share registry dated 9 February 2022 (Scheme Record Date), approximately 0.2% of Class shareholders were non-residents.

HUB24 Limited

33. HUB24 is an Australian-resident company and was listed on the ASX on 5 July 2007.
34. HUB24 is a provider of wealth management superannuation investment platforms, technology and data solutions in the Australian market. It is also involved in the provision of investment and superannuation portfolio administration services, licensee services and IT consulting.

Scheme of Arrangement

35. On 18 October 2021, Class announced that it had entered into the SID with HUB24 for the acquisition of 100% of the ordinary shares in Class in exchange for HUB24 shares, pursuant to a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*.
36. Under the SID (as amended on 13 December 2021), Class agreed that it would not declare, determine or pay any dividends, including any dividends for the six-month period ending 31 December 2021.
37. At a shareholder meeting held on 31 January 2022, Class shareholders approved the Scheme.
38. On 4 February 2022, the Supreme Court of New South Wales approved the Scheme of Arrangement and provided orders pursuant to Part 5.1 of the *Corporations Act 2001*. Class shares were suspended from trading on the ASX from close of trading on 7 February 2022.
39. Entitlement to the Scheme Consideration (which comprises the Scrip Consideration and the Cash Consideration) was determined based on Class shareholders as at 7:00pm (Sydney time) on 9 February 2022 (Scheme Record Date).
40. Payment of the Scheme Consideration to Class shareholders and the transfer of Class shares to HUB24 occurred on 16 February 2022 (Implementation Date).
41. In consideration for the disposal of their Class shares, a Class shareholder received:
- 0.09090909 HUB24 shares for every Class share (Scrip Consideration) held at the Scheme Record Date (excluding ineligible foreign shareholders), and
 - 12.5 cents for every Class share (Cash Consideration) held at the Scheme Record Date.
42. Class shareholders who were ineligible foreign shareholders (a Class shareholder whose address was outside Australia, its external territories or New Zealand) did not receive the HUB24 shares to which they would otherwise be entitled for the disposal of their Class shares. Those HUB24 shares were sold through a sale facility and the net proceeds were paid to each ineligible foreign shareholder.
43. Class was removed from the official list of the ASX with effect from close of trading on 17 February 2022.

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Other matters

44. There was no 'significant stakeholder' or 'common stakeholder' in Class within the meaning of those terms in section 124-783.
45. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of Class shares to HUB24.
46. HUB24 did not make a choice under subsection 124-795(4) that Class shareholders could not obtain the roll-over in Subdivision 124-M for CGT event A1 happening in relation to the exchange of Class shares.
47. For the purposes of section 855-30, the sum of the market values of the assets of Class' assets that were 'taxable Australian real property' under section 855-20 on the Implementation Date did not exceed the sum of the market values of the assets of Class that were not taxable Australian real property on the Implementation Date.

Commissioner of Taxation

18 May 2022

 Status: **not legally binding**

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 partial scrip for scrip roll-over under Subdivision 124-M if a capital gain is made

48. 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.

49. 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 subsections 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.

50. A shareholder can only obtain a partial roll-over if the capital proceeds for their share include something (ineligible proceeds) other than a replacement share (ineligible part) (subsection 124-790(1)). The Scheme that is the subject of this Ruling satisfies the requirements for partial roll-over under Subdivision 124-M.

Consequences if you choose partial scrip for scrip roll-over for your HUB24 Limited shares

Capital gain partially disregarded

51. If you choose partial scrip for scrip roll-over, the capital gain you made from the disposal of a Class share is disregarded to the extent you received replacement HUB24 shares for the disposal of your Class shares (eligible proceeds) (subsection 124-785(1)). The capital gain is not disregarded to the extent that you received Cash Consideration for the disposal of your Class share (ineligible proceeds).

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52. Subsection 124-790(2) provides that the cost base of the ineligible proceeds is that part of the cost base of the original interest as is reasonably attributable to the ineligible proceeds. The cost base of each Class share is, for the purposes of working out the cost base of the replacement HUB24 shares, reduced by that part of the cost base which is reasonably attributable to the Cash Consideration of 12.5 cents.

53. The method to be used by a Class shareholder to calculate that part of the cost base of each Class share that is not reasonably attributable to the Cash Consideration of 12.5 cents (eligible proceeds cost base) is:

$$\begin{array}{rcccl} & & & & \text{Market value of HUB24 share} \\ & & & & \hline \text{Eligible} & & \text{Cost} & & \text{Market} \\ \text{proceeds} & = & \text{base of} & \times & \text{value of} \\ \text{cost base} & & \text{Class} & & \text{HUB24} \\ & & \text{share} & & \text{share} \\ & & & & + & 12.5 \\ & & & & & \text{cents} \end{array}$$

54. The method to be used by a Class shareholder to calculate that part of the cost base of each Class share that is reasonably attributable to the Cash Consideration of 12.5 cents (ineligible proceeds cost base) is:

$$\begin{array}{rcccl} & & & & \text{12.5 cents} \\ & & & & \hline \text{Ineligible} & = & \text{Cost} & \times & \text{Market} \\ \text{proceeds} & & \text{base of} & & \text{value of} \\ \text{cost base} & & \text{Class} & & \text{HUB24} \\ & & \text{share} & & \text{share} \\ & & & & + & 12.5 \\ & & & & & \text{cents} \end{array}$$

55. In working out the amount of the capital gain that is subject to scrip for scrip roll-over, the following method may be applied:

$$\begin{array}{rcccl} \text{Capital gain} & = & \text{Eligible proceeds} & - & \text{Eligible proceeds cost base} \\ \text{(roll-over)} & & & & \end{array}$$

56. In working out the amount of the capital gain that is not subject to scrip for scrip roll-over, the following method may be applied:

$$\begin{array}{rcccl} \text{Capital gain} & = & \text{Ineligible proceeds} & - & \text{Ineligible proceeds cost base} \end{array}$$

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 83A-10(2)
- 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)(b)
- ITAA 1997 110-55(2)
- ITAA 1997 112-30(1)
- ITAA 1997 Subdiv 115-A
- 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(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 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(3)
- ITAA 1997 124-785(4)
- ITAA 1997 124-790
- ITAA 1997 124-790(1)
- ITAA 1997 124-790(2)
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 855-30
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001

ATO references

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