

CR 2022/89 - Home Consortium stapled group - destapling and restructure



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Status: **legally binding**

Class Ruling

Home Consortium stapled group – destapling and restructure

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 income tax consequences for the holders of Home Consortium (HMC) stapled securities, which consists of one share in Home Consortium Developments Limited (HCDL) stapled to one share in Home Consortium Limited (HCL), who (on the destapling of the securities) exchanged their shares in HCDL for shares in HCL under a Scheme of Arrangement and for the consolidation of their shares.
2. Full details of this scheme are set out in paragraphs 28 to 46 of this Ruling.
3. Unless otherwise defined, capitalised terms in this Ruling take the same meaning as in the Shareholder booklet in relation to the scheme.
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

5. This Ruling applies to you if you:
 - were a holder of HMC stapled securities as at 7:00 pm on 17 December 2021 (Record Date)
 - were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) or a non-resident who is not an Ineligible Foreign Securityholder and whose shares in HCDL (and replacement shares in HCL) qualify as indirect Australian real property interests (as defined in section 855-25)

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- did not acquire your HMC stapled securities shares pursuant to an employee share scheme or option plan
- did not hold your HMC stapled securities as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)); that is, the HMC stapled securities were held on capital account for tax purposes.

6. 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 28 to 46 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

7. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

CGT event A1 will happen on the disposal of Home Consortium Developments Limited shares

8. CGT event A1 happened when you disposed of a HCDL share to HCL under the scheme described in this Ruling (subsection 104-10(1)).

9. CGT event A1 happened on the Implementation Date of 24 December 2021 (subsection 104-10(3)).

10. You will make a capital gain when CGT event A1 happened if the capital proceeds from the disposal of your HCDL shares exceed the cost base of the shares (subsection 104-10(4)).

11. You will make a capital loss when CGT event A1 happened if the capital proceeds from the disposal of your HCDL shares are less than the reduced cost base of the shares. The capital loss is the amount of the difference (subsection 104-10(4)).

12. The capital proceeds for each HCDL share are the market value of 1.650189122 HCL shares at \$4.929805 (or $\$2.987418 \times 1.650189122$) on the Implementation Date (paragraph 116-20(1)(b)).

13. The cost base of each HCDL share is that part of the cost base of each HMC stapled security (at the time acquired) as apportioned on the basis of the relative market values of the HCDL shares to the HCL shares at the time acquired.

Availability of scrip for scrip roll-over

14. If you make a capital gain from the disposal of your HCDL share, you may choose to obtain scrip for scrip roll-over (section 124-780).

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

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16. If an exchanging HCDL shareholder is a significant stakeholder (as defined in section 124-783), in order to qualify for the scrip for scrip roll-over it must jointly choose with HCL (the replacement entity) to obtain the roll-over and notify HCL in writing of the cost base of its HCDL shares worked out just before the disposal of the shares (paragraphs 124-780(3)(d) and (e)).

Consequences if scrip for scrip roll-over is chosen

Capital gain is disregarded

17. If you choose to apply scrip for scrip roll-over, the capital gain you make upon the exchange of a HCDL share for a replacement HCL share is disregarded (subsection 124-785(1)).

Acquisition date of the Home Consortium Limited shares

18. If you choose scrip for scrip roll-over, the acquisition date of the HCL shares for the purpose of making a discount capital gain is the date you acquired your original HCDL shares (as HMC stapled securities) that were exchanged for the HCL shares (table item 2 of subsection 115-30(1)).

Cost base and reduced cost base of the Home Consortium Limited shares received

19. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement HCL share (received in exchange for your original HCDL shares) is worked out by reasonably attributing the cost base and reduced cost base (respectively) of your original HCDL shares which were exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

Consequences if scrip for scrip roll-over is not chosen or cannot be chosen

Capital gain is not disregarded

20. If you do not choose scrip for scrip roll-over, or cannot choose roll-over, you must account for any capital gain or capital loss from CGT event A1 happening on the disposal of your HCDL 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).

21. If you make a capital gain where 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. The HCDL shares must have been acquired (as HMC stapled securities) or taken to have been acquired by you at least 12 months before the Implementation Date (section 115-25).

Acquisition date of the Home Consortium Limited shares received

22. If you do not choose scrip for scrip roll-over, or cannot choose roll-over, the date of acquisition of the HCL shares is the date you were issued the HCL shares, being the Implementation Date (table item 2 of section 109-10).

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Cost base and reduced cost base of the Home Consortium Limited shares received

23. If you do not choose scrip for scrip roll-over, or cannot choose roll-over, the first element of the cost base and reduced cost base of each replacement HCL share received is equal to the market value of the 0.60599115 HCDL shares given in respect of acquiring each HCL share (subsections 110-25(2) and 110-55(2)). The market value of a HCDL share is worked out as at the time of the acquisition of the HCL share on the Implementation Date. The market value of a HCDL share on the Implementation Date is \$4.929805 (which is the 1-day volume-weighted average price of HCL shares on the Implementation Date of \$7.917223 \times 62.266844%). As such, the cost base of each replacement HCL share is \$2.987418 ($\$4.929805 \times 0.6059911$).

Share consolidation

24. The consolidation of your HCL shares on 5 January 2022 (on a 2.650189122-to-one basis) did not result in a CGT event for your shares (section 112-25).

25. You are taken to have acquired your consolidated HCL shares at the time you acquired the pre-consolidation HCL shares to which they relate (subsection 109-5(1)).

26. The cost base and reduced cost base of a consolidated HCL share is equal to the sum of the cost bases and reduced cost bases (as appropriate) of the 2.650189122 pre-consolidation HCL shares you held before the consolidation (subsection 112-25(4)).

27. If you hold more than one parcel of pre-consolidation HCL shares with different acquisition dates, you will be required to determine the date of acquisition of your consolidated HCL shares on a parcel by parcel basis.

Scheme

28. 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.

Home Consortium Group

29. HMC stapled securities, consisting of one ordinary share in HCL stapled to one ordinary share in HCDL, were first listed on the Australian Securities Exchange as a single stapled security (HMC) on 14 October 2019.

30. The HomeCo group arose from the acquisition of the former Masters Home Improvement property portfolio entity (Hydrox Holdings Pty Ltd, which was renamed HCL) from Woolworths Limited in October 2017. It is an owner, developer and manager of properties (including large format retail centres) in Australia and also a property fund manager.

31. HCL and HCDL are each head companies of their respective income tax consolidated groups.

32. As at 15 December 2021, HMC had 290,266,355 fully-paid ordinary class stapled shares on issue.

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Restructure

33. On 25 August 2021, HMC announced it was considering making changes to simplify its corporate structure.
34. On 18 October 2021, HMC announced a proposal to destaple and (pursuant to a scheme of arrangement) form a single company structure under HCL. Under the scheme, HCDL shareholders would exchange their shares in HCDL for new shares in HCL followed by a consolidation of the HCL shares.
35. At the General and Scheme Meetings held on 10 December 2021:
- HCL and HCDL shareholders approved by special resolution the destapling of HCL and HCDL shares
 - HCDL shareholders approved (in accordance with subsection 411(4) of the *Corporations Act 2001*) the scheme of arrangement resolution under which HCL would acquire 100% of the issued ordinary shares in HCDL, with HCDL shareholders to receive 1.650189122 HCL shares for each HCDL share exchanged (fractional entitlements of less than 0.5 to be rounded down and fractional entitlements equal to or more than 0.5 to be rounded up)
 - HCL shareholders approved by ordinary resolution the subsequent consolidation of the HCL shares whereby every 2.650189122 HCL shares to be consolidated into one HCL share (fractional entitlements rounded up or down to the nearest whole number).
36. On 14 December 2021, the Supreme Court of New South Wales approved the scheme of arrangement as approved by HCDL shareholders.
37. On 24 December 2021, the destapling and restructure was implemented and the holders of the former HMC stapled securities disposed of their HCDL shares to HCL in exchange for 1.650189122 HCL shares for each HCDL share held on the Record Date.
38. Since 24 December 2021, HCL is the sole Australian Securities Exchange-listed entity.
39. On 5 January 2022, HCL consolidated the total number of shares on issue (in the ratio of 2.650189122 to one) such that former HMC stapled security holders hold one share in HCL for each HMC stapled share that they held prior to the Scheme.

Other matters

40. HCDL and HCL have more than 300 members (shareholders), with this Ruling made on the basis the concentrated ownership test in section 124-810 does not apply (to treat each company as if it did not have at least 300 members).
41. No exchanging HCDL shareholder is a common stakeholder for the scheme (as defined in section 124-783).
42. There is one 'significant stakeholder' for the scheme (as defined in section 124-783), meaning the conditions in paragraphs 124-780(3)(d) and (e) will need to be met (by this shareholder) in order for it to qualify for the scrip for scrip roll-over.
43. Neither HCL nor any members of its wholly-owned group issued equity, apart from the replacement HCL shares issued under the scheme, or owed new debt to an entity that was not a member of the group for the purposes of paragraph 124-780(3)(f).

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44. Subsection 124-780(4) and the further conditions in subsection 124-780(5) do not apply.

45. HCL did not make a choice under subsection 124-795(4) that the HCDL shareholders could not obtain roll-over pursuant to Subdivision 124-M for CGT event A1 happening in relation to the exchange of their HCDL shares under the scheme.

When this Ruling does not apply

46. This Ruling does not apply to rights held by former directors and employees under the Non-Executive Directory Equity Plan and the Employee Equity Plan.

Commissioner of Taxation

12 October 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.*

Scrip for scrip roll-over

47. 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 and reduced cost base of the replacement share.

48. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being able 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 (shareholder) exchanges shares in one company for shares in another company (paragraph 124-780(1)(a))
- the exchange is in consequence of a single arrangement that (in this case) satisfies subsection 124-780(2)(A) (paragraph 124-780(1)(b))
- the conditions in subsection 124-780(3) are satisfied (paragraph 124-780(1)(c)), and
- none of the exceptions for obtaining scrip for scrip roll-over in section 124-795 are applicable.

49. The Scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

Status: **not legally binding**

References

Legislative references:

- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(4)
- ITAA 1997 109-5(1)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 112-25
- ITAA 1997 112-25(4)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25
- 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(1)(b)
- ITAA 1997 124-780(1)(c)
- ITAA 1997 124-780(2)(A)
- ITAA 1997 124-780(3)(d)
- ITAA 1997 124-780(3)(e)
- ITAA 1997 124-780(3)(f)
- ITAA 1997 124-780(4)
- ITAA 1997 124-780(5)
- ITAA 1997 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 124-810
- ITAA 1997 Div 230
- ITAA 1997 855-25
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- ITAA 1936 6(1)
- Corporations Act 2001 411(4)

ATO references

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