


CR 2022/94 - Atlassian Corporation Plc - restructure

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Class Ruling

Atlassian Corporation Plc – restructure

📌 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 Australian residents in respect of the exchange of Class A and Class B shares in Atlassian Corporation Plc (Atlassian UK) for replacement shares in Atlassian Corporation (Atlassian US) on 1 October 2022 (Effective Date).
2. Details of this scheme are set out in paragraphs 20 to 43 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 resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) who held your Atlassian UK shares on capital account for tax purposes and hold your Atlassian US shares on capital account
 - were, at 11:00 am (AEST) on 29 September 2022 (Scheme Record Time)
 - absolutely entitled (as the term is used in section 106-50) to Class A shares or Class B ordinary shares in Atlassian UK where either Cede & Co is the registered shareholder (as nominee for The Depository Company) or Computershare DR Nominees Limited is the registered shareholder (as nominee for the Computershare Depository), or

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- a registered shareholder of Class A ordinary shares or Class B ordinary shares in Atlassian UK
- received replacement Class A or Class B common shares in Atlassian US to which you were either absolutely entitled (as the term is used in section 106-50) or the registered shareholder.

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 20 to 43 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 2022 to 30 June 2023.

Ruling

Cancellation of Atlassian Corporation Plc shares – capital account

7. CGT event C2 happened when each of your Atlassian UK shares were cancelled (section 104-25).

8. The time of CGT event C2 was the Effective Date, being 1 October 2022 (paragraph 104-25(2)(b)).

9. The capital proceeds from CGT event C2 happening on the cancellation of each Atlassian UK share is the market value of each Atlassian US share received in respect of that cancellation, worked out as at the Effective Date (subsection 116-20(1)).

10. You will make a capital gain from CGT event C2 happening if the capital proceeds from the cancellation of your Atlassian UK share exceeded the cost base of that share (subsection 104-25(3)). You will make a capital loss from CGT event C2 happening if the capital proceeds from the cancellation of your Atlassian UK share was less than the reduced cost base of that share (subsection 104-25(3)).

Availability of Division 615 roll-over for shares

11. A cancellation of shares in an original entity in return for shares in an interposed entity company (and nothing else), as described in section 615-10, happened when your Atlassian UK shares were cancelled and you received Atlassian US shares in return for your Atlassian UK shares being cancelled.

12. Therefore, you can choose the roll-over under Division 615 in respect of the cancellation of your shares in Atlassian UK (section 615-10).

Consequences if the rollover is chosen

Capital gains tax consequences for shares held as capital assets

13. Where the roll-over under Division 615 is chosen, you will disregard any capital gain or capital loss made from the cancellation of your Atlassian UK shares in return for Atlassian US shares (sections 615-10 and 615-40, and subsection 124-15(2)).

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14. The first element of the cost base and reduced cost base of each Atlassian US share that you received is calculated by dividing the total of the cost bases of your Atlassian UK shares that were cancelled under the scheme (worked out at the time of their cancellation) by the number of Atlassian US shares you received in exchange (section 615-40 and subsection 124-15(3)).

15. For the purposes of determining any discount capital gains under Division 115, you are taken to have acquired your Atlassian US shares on the same date you acquired your corresponding Atlassian UK shares (table item 2 of subsection 115-30(1)).

Consequences if the rollover is not chosen or cannot be chosen

16. Where the roll-over under Division 615 is not chosen, or cannot be chosen, you must take into account any capital gain or capital loss from CGT event C2 happening on the cancellation of your Atlassian UK shares in working out your net capital gain or net capital loss for the income year in which CGT event C2 happens (sections 102-5 and 102-10).

17. If you make a capital gain on the cancellation of your Atlassian UK shares, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. In particular, the Atlassian UK shares that were cancelled must have been acquired by you at least 12 months before the Effective Date (section 115-25).

18. The date of acquisition of Atlassian US shares is the date you were issued your Atlassian US shares, being the Effective Date (table item 2 of section 109-10).

19. The first element of the cost base and reduced cost base of each replacement Atlassian US share received is equal to the market value of the Atlassian UK share cancelled in respect of acquiring the Atlassian US share (subsections 110-25(2) and 110-55(2)).

Scheme

20. 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.

The Atlassian Group

21. The Atlassian Group licenses and sells software products that support the process of planning, building and launching software. It operates in various jurisdictions around the world and has seen significant growth in its operations in the United States of America (US).

Atlassian Corporation Plc

22. Atlassian UK was incorporated in the United Kingdom (UK) on 14 November 2013 and is a tax resident of the UK.

23. Atlassian UK was the holding company of the Atlassian Group before redomiciling.

24. Atlassian UK had issued Class A ordinary shares and Class B ordinary shares. The Class A ordinary shares were listed for quotation on the NASDAQ on 10 December 2015, under the NASDAQ code 'TEAM'.

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25. Atlassian UK also had in place a number of share plans for executives and employees of Atlassian UK and its subsidiaries.

Atlassian Corporation

26. Atlassian US was incorporated in Delaware in the US on 1 July 2022 and is a tax resident of the US.

27. Atlassian US was incorporated to be the new holding company of the Atlassian Group upon the group redomiciling from the UK to the US.

28. Upon the incorporation of Atlassian US and before the redomiciling, each of the 2 individual co-founders of the Atlassian Group had been issued one share of Atlassian US (the Formation Shares). Each Formation Share had been issued for a nominal amount of share capital.

Atlassian Holdings, Inc.

29. Atlassian Holdings, Inc. (Atlassian Holdco) was incorporated in Delaware in the US on 1 July 2022 and is a tax resident of the US.

30. Atlassian Holdco is a wholly-owned subsidiary of Atlassian US.

Redomiciling to the United States of America

31. On 10 February 2022, Atlassian UK announced plans to redomicile from the UK to the US.

32. On 12 July 2022, Atlassian UK published a proxy statement containing the text of a proposed UK scheme of arrangement to be entered into between Atlassian UK and its shareholders.

33. On 23 August 2022, two special meetings of shareholders of Atlassian UK were held. The first shareholder meeting (the Court Meeting) approved the scheme of arrangement under Part 26 of the *Companies Act 2006* (UK). The second shareholder meeting (the General Meeting) approved a special resolution of Atlassian UK that is also required to effect the redomiciling.

34. On 13 September 2022, after the date of the Court Meeting but prior to the Effective Date, Atlassian UK issued a single Class C ordinary share to Atlassian US for nominal consideration.

35. On 1 October 2022 (Effective Date), pursuant to the scheme of arrangement and special resolutions:

- All Class A ordinary shares and Class B ordinary shares in Atlassian UK were cancelled as part of a reduction of capital under section 641 of the *Companies Act 2006* (UK) and Atlassian UK became a wholly-owned subsidiary of Atlassian US.
- For each Class A ordinary share in Atlassian UK that was cancelled, Atlassian US issued a replacement share of Class A common stock of Atlassian US to the registered holder of the Class A ordinary share in Atlassian UK at the Scheme Record Time.
- For each Class B ordinary share in Atlassian UK that was cancelled, Atlassian US issued a replacement share of Class B common stock of

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Atlassian US to the registered holder of the Class B ordinary share in Atlassian UK at the Scheme Record Time.

- Atlassian UK issued new Class A ordinary shares and new Class B ordinary shares in Atlassian UK (the Intra-Group Shares) to Atlassian US, equal to the number of Class A and Class B ordinary shares in Atlassian UK that were cancelled pursuant to the reduction of capital.

36. Other than the issue of replacement shares of Atlassian US, no other consideration was provided for the cancellation of shares in Atlassian UK.

37. The ratio of the market value of each exchanging shareholder's shares in Atlassian US to the market value of all the Atlassian US shares equals the ratio of the market value of that shareholder's Atlassian UK shares to the market value of all Atlassian UK shares that were cancelled under the scheme of arrangement.

38. On 1 October 2022, Atlassian US redeemed the Formation Shares.

39. On 4 October 2022, Atlassian US contributed its Class C ordinary share and Intra-Group Shares in Atlassian UK to Atlassian Holdco for no consideration. Atlassian UK then became a wholly-owned subsidiary of Atlassian Holdco and indirectly a wholly-owned subsidiary of Atlassian US.

40. The Class A ordinary shares in Atlassian UK were suspended from trading on the NASDAQ following the close of trading US Eastern time on 30 September 2022. The shares of Class A common stock of Atlassian US were then listed on the NASDAQ at the opening of trade on 3 October 2022 US Eastern time under the same symbol 'TEAM'.

Other matters

41. Atlassian US will own all the original interests in Atlassian UK immediately after the completion of the scheme of arrangement.

42. The replacement shares issued by Atlassian US are not redeemable shares.

43. Within 2 months after the Effective Date, Atlassian US will elect that section 615-65 applies.

Commissioner of Taxation

26 October 2022

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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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CGT event C2 occurs

44. CGT event C2 happens when the ownership of an intangible asset, such as a share, ends by the asset being redeemed, cancelled, released, discharged, expiring, abandoned, surrendered or forfeited (subsection 104-25(1)).
45. CGT event C2 will happen when your ownership of an Atlassian UK share is cancelled under the scheme of arrangement described in paragraphs 20 to 43.
46. The time of the CGT event is at the Effective Date (subsection 104-25(2)).
47. The capital proceeds when CGT event C2 occurs will be the market value of the Atlassian US share received as consideration for the cancellation of the corresponding Atlassian UK share (paragraph 116-20(1)(b)).
48. The market value substitution rule in subsection 116-30 does not apply.
49. You will make a capital gain from CGT event C2 happening to your Atlassian UK share if the capital proceeds from the event exceed the cost base of your Atlassian UK share (subsection 104-25(3)).
50. You will make a capital loss if the capital proceeds from CGT event C2 are less than the reduced cost base of your Atlassian UK share (subsection 104-25(4)).
51. If you make a capital gain when CGT event C2 happens to your Atlassian UK share, you may be eligible to treat the capital gain as a discount capital gain subject to the conditions in Division 115.

Roll-over relief available under section 615-10 of Division 615

52. Roll-over under Division 615 enables a member of a company or a trust to disregard a capital gain or capital loss from a share or a unit, that is either disposed of, redeemed or cancelled as part of a reorganisation of the affairs of the entity, where the member becomes the owner of new shares in another company in exchange.
53. Section 615-10 contains a number of conditions for eligibility to choose roll-over. The main conditions that are relevant to the cancellation or redemption of Atlassian UK shares in return for Atlassian US shares are:
- the interposed company acquires one or more, but not all, of the shares or units in the original entity (Atlassian UK) and these are the first shares that the interposed company has acquired in the original entity (paragraphs 615-10(1)(a) and (b))

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- there must be more than one exchanging member who own all the remaining shares in the original entity and those shares must be redeemed or cancelled (paragraphs 615-10(1)(c) and (d))
- there must be a scheme for reorganising the original entity's affairs and each exchanging member received shares in the interposed company in return for their shares or units being redeemed or cancelled and nothing else (paragraph 615-10(1)(e))
- the interposed company must own all the shares or units in the original entity immediately after all the exchanging members have disposed of their shares or units, or had their shares or units redeemed or cancelled, in the original entity (completion time) (section 615-15)
- immediately after the completion time, each exchanging member must own a whole number of shares in the interposed company (paragraph 615-20(1)(a))
- immediately after the completion time, each exchanging member must own a percentage of the shares in the interposed company that were issued to all the exchanging members of the original entity that is equal to the percentage of the shares or unit in the original entity that the exchanging member owned (paragraph 615-20(1)(b))
- immediately after the completion time, the exchanging members must own all the shares in the interposed company or entities other than the exchanging members must own no more than 5 shares in the interposed company and the market value of those shares is such that it is reasonable to treat the exchanging members as owning all the shares (subsection 615-25(3))
- the shares issued in the interposed company must not be redeemable shares (subsection 615-25(1)), and
- the market value ratio tests in subsection 615-20(2) are satisfied.

54. The scheme described in paragraphs 20 to 43 of this Ruling satisfies these conditions. Therefore, you are entitled to choose to obtain rollover under Division 615.

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References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 102-5
 - ITAA 1997 104-25
 - ITAA 1997 104-25(1)
 - ITAA 1997 104-25(2)
 - ITAA 1997 104-25(2)(b)
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 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
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 - ITAA 1997 115-25
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 - ITAA 1997 124-15(2)
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 - ITAA 1997 Div 230
 - ITAA 1997 Div 615
 - ITAA 1997 615-10
 - ITAA 1997 615-10(1)(a)
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 - ITAA 1997 615-15
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 - ITAA 1997 615-20(2)
 - ITAA 1997 615-25(1)
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 - ITAA 1997 615-65
 - Companies Act 2006 (UK) Pt 26
 - Companies Act 2006 (UK) 641
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ATO references

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