

CR 2024/34 - Carbon Revolution Limited - exchange of shares for Carbon Revolution plc shares



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Status: **legally binding**

Class Ruling

Carbon Revolution Limited – exchange of shares for Carbon Revolution plc shares

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for Australian-resident shareholders of Carbon Revolution Limited (Carbon) who had their ordinary shares in Carbon cancelled in exchange for shares in Carbon Revolution plc (MergeCo) on 3 November 2023 (Implementation Date).
2. Details of this scheme are set out in paragraphs 25 to 35 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:
 - are a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*, and not a temporary resident as defined in section 995-1
 - held your Carbon shares on capital account – that is, your Carbon shares were neither held as revenue assets (as defined in section 977-50) nor trading stock (as defined in subsection 995-1(1))
 - had your Carbon shares cancelled and received replacement MergeCo shares, and
 - did not hold your Carbon shares under a Carbon employee share plan at the time the shares were cancelled.

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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 25 to 35 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 2023 to 30 June 2024.

Ruling

Cancellation of Carbon Revolution Limited shares – CGT event C2

7. CGT event C2 happened to each of your Carbon shares that were cancelled (subsection 104-25(1)).

8. CGT event C2 happened when the Carbon shares were cancelled on the Implementation Date (subsection 104-25(2)).

9. The capital proceeds in respect of CGT event C2 happening was the market value of the proportional entitlement to a MergeCo share you received as consideration for each Carbon share you held that was cancelled (subsection 116-20(1)). The market value of that proportional entitlement is worked out as at the time of CGT event C2 (paragraph 116-20(1)(b)). The Commissioner accepts that the market value of the proportional entitlement to a MergeCo share was \$0.21. This is the amount of capital proceeds you received from CGT event C2 happening to each of your Carbon shares.

10. You made a capital gain from CGT event C2 happening if the capital proceeds from the cancellation of your Carbon share exceeded the cost base of that share. The capital gain is the amount of the excess (subsection 104-25(3)).

11. You made a capital loss from CGT event C2 happening if the capital proceeds from the cancellation of your Carbon share were less than the reduced cost base of that share. The capital loss is the amount of the difference (subsection 104-25(3)).

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

12. Subject to the qualification in paragraph 13 of this Ruling, if you made a capital gain from the cancellation of a Carbon share, you may choose scrip for scrip roll-over under Subdivision 124-M (section 124-780). Scrip for scrip roll-over is not available if you made a capital loss.

13. Scrip for scrip roll-over cannot be chosen if any capital gain you made from the replacement MergeCo share would be disregarded (except because of a roll-over) (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

14. If scrip for scrip roll-over is chosen, the capital gain you made on your Carbon share being cancelled is disregarded (subsection 124-785(1)).

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15. The first element of the cost base and reduced cost base of each MergeCo share acquired under the scheme is worked out by reasonably attributing to it the cost base of the corresponding Carbon share (subsections 124-785(2) and (4)).

16. Accordingly, the first element of the cost base (or reduced cost base) of each MergeCo share you received as a result of the scheme will be equal to the sum of the cost bases of your Carbon shares cancelled divided by the number of MergeCo shares you receive.

Acquisition date of Carbon Revolution plc shares

17. Pursuant to table item 2 of subsection 115-30(1), the time of acquisition of the replacement asset acquired under a replacement asset roll-over is the date when the original asset involved in the roll-over was acquired.

18. Accordingly, for the purposes of applying the CGT discount provisions, if you choose roll-over under Subdivision 124-M, you are taken to have acquired your MergeCo shares when you acquired the corresponding Carbon share.

Consequences if scrip for scrip roll-over is not chosen

19. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event C2 happening on the cancellation of your Carbon shares in working out your net capital gain or net capital loss for the income year in which CGT event C2 happened (sections 102-5 and 102-10).

20. If you make a capital gain where 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.

21. If you do not choose, or cannot choose, scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement MergeCo share that you received is equal to the market value of the Carbon shares you gave in respect of acquiring the MergeCo share (subsections 110-25(2) and 110-55(2)).

22. The market value of the Carbon shares you gave is worked out as at the time when you acquired the MergeCo shares on 3 November 2023. The Commissioner accepts that the market value of a Carbon share at that time was \$0.21.

23. Accordingly, the first element of the cost base (or reduced cost base) of each MergeCo share you received will be equal to the aggregate market value of your Carbon shares cancelled divided by the number of MergeCo shares you received.

24. A Carbon shareholder that does not choose roll-over, or cannot choose roll-over, will acquire their MergeCo shares on the Implementation Date (table item 2 of section 109-10).

Scheme

25. 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.

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Carbon Revolution Limited

26. Carbon is the head company of an income tax consolidated group that is a widely held public company listed on the Australian Securities Exchange (ASX) (ASX code CBR).
27. Carbon manufactures carbon fibre wheels for the global automotive industry.
28. Currently, Carbon has the following interests on issue:
- ordinary shares, held by Australian and foreign-resident shareholders, and
 - options and rights issued pursuant to employee and director share schemes and long-term incentive plans, held by Carbon's Australian and foreign-resident employees and directors.

Scheme of arrangement and reduction of capital

29. As part of Carbon's strategy for growth, it has been seeking new investors to accelerate its plans to grow, predominantly in foreign markets.
30. Carbon was approached by Twin Ridge Capital Acquisition Corp., a Cayman-organised and New York Stock Exchange listed Special Purpose Acquisition Company (SPAC), which proposed a merger of the 2 entities.
31. Carbon and SPAC agreed on the terms of the merger by entering into a binding Business Combination Agreement (BCA) and accompanying Scheme Implementation Deed (SID), on 29 November 2022 and 30 November 2022, respectively.
32. Under the BCA and SID, a newly formed company, Carbon Revolution plc (MergeCo), acquired both Carbon (via the SID) and the SPAC (via the BCA) (together, the Transaction).
33. As part of the Transaction:
- SPAC merged with a new subsidiary of MergeCo, with existing SPAC shareholders receiving MergeCo shares and warrants in exchange for their existing SPAC shares and warrants.
 - Carbon shares were cancelled by way of a reduction of capital under section 256B of the *Corporations Act 2001*.
 - In consideration for the cancellation of Carbon shares, Carbon shareholders received 0.00643121435972925 MergeCo shares per Carbon share.
 - Where the calculation of the number of MergeCo shares to be issued to a Carbon shareholder would have resulted in them being entitled to a fraction of a MergeCo share, then that fractional entitlement was rounded down to the nearest whole number of MergeCo shares.
 - Carbon issued a share to MergeCo (resulting in Carbon becoming a wholly owned subsidiary of MergeCo).
34. The Transaction completed on 3 November 2023 (the Implementation Date).

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35. Upon closing of the Transaction, the ordinary shares and warrants of MergeCo commenced trading on the National Association of Securities Dealers Automatic Quotation System, and Carbon shares were delisted from the ASX.

Commissioner of Taxation

26 June 2024

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.*

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

36. 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.

37. 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:

- 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)
- conditions for the roll-over in subsection 124-780(3) are satisfied
- further conditions in subsection 124-781(4), if applicable, are satisfied, and
- exceptions for the scrip for scrip roll-over in section 124-795 are not applicable.

38. 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 1936 6(1)
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-25(1)
 - ITAA 1997 104-25(2)
 - ITAA 1997 104-25(3)
 - ITAA 1997 109-10
 - 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)
 - 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 124-781(4)
 - 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 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 256B
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ATO references

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