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## Taxation Determination

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Income tax: capital gains tax: scrip for scrip roll-over: is the reference to a roll-over in paragraph 124-795(2)(a) of the *Income Tax Assessment Act 1997* limited to a replacement asset roll-over listed in section 112-115 of the *Income Tax Assessment Act 1997* or to a same asset roll-over listed in section 112-150 of the *Income Tax Assessment Act 1997*?

**📌 This Ruling provides you with the following level of protection:**

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

**[Note:** *This is a consolidated version of this document. Refer to the ATO Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.*]

### Ruling

1. No. 'Roll-over' in paragraph 124-795(2)(a) of the *Income Tax Assessment Act 1997* (ITAA 1997) does not refer only to a replacement asset roll-over listed in section 112-115 of the ITAA 1997 or to a same asset roll-over listed in section 112-150 of the ITAA 1997. 'Roll-over' can also refer to a provision that operates in a similar manner to defer tax recognition by disregarding a capital gain or loss and providing for a cost base/reduced cost base transfer.

### Example

2. *In 2003, Lisa acquired 1,000 options to acquire shares in an Australian listed public company.*

3. *In 2004, this company was acquired by another Australian public company. Under an arrangement which satisfied the conditions for roll-over under Subdivision 124-M, the*

*options Lisa held in the original company were exchanged for options to acquire shares in the acquiring company.*

4. *Any capital gain Lisa might make from exercising her options to acquire shares in the acquiring company would be disregarded: subsection 134-1(4) of the ITAA 1997. The Commissioner takes the view that Lisa is entitled to choose scrip for scrip roll-over relief because the capital gain would be disregarded under a 'roll-over'.*

## **Date of effect**

5. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**

22 March 2006

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## Appendix 1 – Explanation

**❶** *This Appendix 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.*

### Explanation

6. Scrip for scrip roll-over is not generally available if any capital gain a taxpayer might make from a replacement interest would be disregarded: paragraph 124-795(2)(a) of the ITAA 1997. The reason for this is that any capital gain deferred on the scrip for scrip roll-over would never be captured on a later realisation of the replacement interest. Thus, scrip for scrip roll-over would not be available if a replacement interest acquired under a scrip for scrip arrangement were trading stock or a share in a PDF (pooled development fund). Subsequent capital gains from these assets would be disregarded under sections 118-25 and 118-13 of the ITAA 1997 respectively.

7. There is an exception, however, if a capital gain that might be made on a replacement interest is disregarded because of roll-over. In such a case, the taxing point would only be deferred.

8. 'Roll-over' is not a defined term in the ITAA 1997.

9. The capital gains tax (CGT) provisions refer specifically to same-asset and replacement-asset rollovers as defined in subsection 995-1(1) of the ITAA 1997. Broadly, these roll-overs enable taxpayers to disregard gains or losses made in relation to CGT assets until the happening of a later CGT event. They also provide for the cost base and reduced cost base of the original asset to be transferred to a different taxpayer (same-asset roll-over) or to another asset (replacement-asset rollover).

10. However, in the statutory context in which the expression 'roll-over' is used in paragraph 124-795(2)(a) of the ITAA 1997, the Commissioner takes the view that it does not only refer to the roll-overs that are listed in the tables in section 112-115 and 112-150 of the ITAA 1997. In the Commissioner's view, 'roll-over' includes any provision that has the effect of deferring, but not eliminating, tax recognition of a capital gain and providing for a cost base/reduced cost base transfer.

11. For example, Subdivision 130-C of the ITAA 1997 operates as a form of roll-over when a convertible interest is converted. Any capital gain or loss from the conversion is disregarded under subsection 130-60(3) of the ITAA 1997. Subsection 130-60(1) of the ITAA 1997 ensures that the cost base/reduced cost base of the converting interest is included in the cost base/reduced cost base of the shares or units acquired as a result of the conversion.

12. Similarly, Division 128 of the ITAA 1997 provides a form of roll-over in respect of the assets owned by an individual when they die.

13. Other provisions operate to confer a roll-over when options or rights are exercised.

14. If a narrow interpretation of the term roll-over were adopted, it would mean that scrip for scrip roll-over would not be available for taxpayers who exchange options in one company for options in another company (because a capital gain from the exercise of the option would be disregarded). This is clearly not consistent with the policy intent of Subdivision 124-M of the ITAA 1997 (see paragraph 2.17 of the Explanatory Memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999).

## References

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*Previous draft:*

TD 2005/D55

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- capital gain
- capital gains tax
- CGT event
- convertible interests
- scrip for scrip roll-over

*Legislative references:*

- TAA 1953
- ITAA 1997 112-115
- ITAA 1997 112-150

- ITAA 1997 118-13
- ITAA 1997 118-25
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-795(2)(a)
- ITAA 1997 Div 128
- ITAA 1997 Subdiv 130-C
- ITAA 1997 130-60(1)
- ITAA 1997 130-60(3)
- ITAA 1997 134-1(4)
- ITAA 1997 995-1(1)

*Other references:*

- Explanatory Memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999)

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ATO references

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