



CR 2005/76 - Income tax: scrip for scrip roll-over: proposed acquisition of Progressive Enterprises Holdings Limited by Woolworths Limited

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Class Ruling

Income tax: scrip for scrip roll-over: proposed acquisition of Progressive Enterprises Holdings Limited by Woolworths Limited

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the tax laws identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are the following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997):

- section 104-10;
- section 109-10;
- subsection 116-20(1); and
- Subdivision 124-M.

Class of persons

3. The class of persons to whom this Ruling applies is the shareholders of Progressive Enterprises Holdings Limited (PEH) who:

- (a) hold their PEH shares on capital account;

- (b) transfer their PEH shares to WOW (NZ) Supermarkets Limited (WOW NZ), a wholly owned subsidiary of Woolworths Limited (WOW), under the scheme of transfer (referred to as the Transfer Scheme and further described in paragraphs 17 to 21) and receive scrip in WOW;
- (c) are not 'significant stakeholders' within the meaning of that expression in Subdivision 124-M of the ITAA 1997; and
- (d) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936*.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 27.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies to the year of income ended 30 June 2006 or substituted accounting period. However, the Ruling 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn immediately after 30 June 2006. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the arrangement during the term of the Ruling.

Arrangement

10. The arrangement that is the subject of this Ruling is described below. The description is based on, and includes reference to, the following documents:

- (a) Class Ruling application dated 17 August 2005 from Ernst & Young requesting the Commissioner make a Class Ruling in relation to scrip for scrip roll-over relief that may apply to the acquisition of PEH shares by WOW;
- (b) Foodland Associated Limited (FAL) and WOW Press Releases of 25 May 2005 and 30 May 2005;
- (c) draft Merger Implementation Agreement – Transfer Scheme dated 11 August 2005;
- (d) draft FAL Scheme Booklet dated 8 August 2005;
- (e) e-mails from Ernst & Young from 15 June 2005 to 13 September 2005; and
- (f) notes of meeting on 22 July 2005 between the Tax Office and WOW.

Note 1: Certain information received from Ernst & Young and WOW has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

Note 2: Certain key terms contained in this Ruling are defined in the table in Appendix A.

11. The arrangement that is the subject of this Ruling involves each shareholder in PEH transferring their PEH shares to WOW NZ (the arrangement is discussed in more detail from paragraph 22).

12. The arrangement is part of a proposal announced by FAL on 25 May 2005. The proposal involves the acquisition of FAL's Australian business assets (excluding Australian Woolworths Action Stores) by Metcash Limited (Metcash) and the acquisition of FAL's New Zealand business assets and Australian Woolworths Action Stores by WOW.

13. The acquisitions will occur through the implementation of two separate schemes of arrangement; the Demerger Scheme and the Transfer Scheme.

The Demerger Scheme

14. The business assets of FAL will be divided as follows:
 - (a) PEH (a recently incorporated wholly owned subsidiary of FAL) will acquire FAL's New Zealand business assets; and
 - (b) FAL will hold the Australian business assets.
15. PEH shares will be transferred from FAL to FAL shareholders to effect the demerger.
16. The Demerger Scheme is the subject of Class Ruling CR 2005/74.

The Transfer Scheme

17. Immediately following the demerger it is proposed that:
 - (a) PEH shares will be transferred to the WOW Group; and
 - (b) FAL shares will be transferred to the Metcash Group.
18. The transfer of PEH to the WOW Group and the transfer of FAL to the Metcash Group are to be implemented under one scheme of arrangement (the Transfer Scheme). The transfers to the WOW Group and the Metcash Group cannot occur separately.
19. If the Transfer Scheme is approved by FAL shareholders, the demerged business assets acquired by PEH and transferred to the WOW Group will include Australian Woolworths Action Stores. If the Transfer Scheme is not approved the demerged business assets acquired by PEH will not include Australian Woolworths Action Stores.
20. The Transfer Scheme is conditional upon approval by FAL shareholders of the Demerger Scheme. The Demerger Scheme is not conditional upon approval of the Transfer Scheme. Both schemes require approval by the Court.
21. The Transfer Scheme as it relates to the transfer of FAL shares to the Metcash Group is the subject of Class Ruling CR 2005/75.

The Transfer Scheme where PEH shares are transferred to the WOW Group

22. The Transfer Scheme will result in WOW NZ acquiring 100% of the voting shares in PEH. WOW will then be the ultimate holding company of PEH.
23. Under the Transfer Scheme, shareholders of PEH may elect to receive either:
 - the WOW Maximum Cash Consideration (up to 100% in cash);

- the WOW Maximum Share Consideration (up to 100% in WOW shares); or
- the WOW Standard Consideration (a fixed proportion of cash and WOW shares).

Each of the choices will include different proportions of cash and WOW shares. A PEH shareholder who does not make a valid election will receive the WOW Standard Consideration.

24. The amount of cash and the number of WOW shares received by each PEH shareholder will depend on the choices made by all of the FAL shareholders and may be subject to scale back. However, the total consideration which will be payable by WOW to the PEH shareholders will not exceed:

- the Woolworths Cash Consideration Cap, being cash of \$1,250 million less net assumed debt (the amount of the external debt of the PEH Post-Demerger Group which will be assumed by WOW on the Transfer Implementation Date); and
- the Woolworths Share Consideration Cap, being 81,592,689 WOW shares.

If Australian Woolworths Action Store(s) cannot be transferred to the WOW group, the total consideration will be reduced by their value.

Other aspects of the Transfer Scheme

25. The PEH shares to which an ineligible overseas shareholder may become entitled under the Demerger Scheme will be transferred to WOW NZ. WOW will issue WOW shares to which an ineligible overseas shareholder becomes entitled under the Transfer Scheme to an agent of WOW, who will then sell those WOW shares and remit the average net proceeds of sale to each ineligible overseas shareholder. Generally, an ineligible overseas shareholder is a FAL shareholder whose address, as shown on the register of members of FAL, is not in Australia or New Zealand.

26. Both PEH and WOW have at least 300 members just before the commencement of the arrangement. There are no significant stakeholders or common stakeholders in either PEH or WOW.

27. PEH is an Australian resident at the time of the arrangement. WOW NZ is a New Zealand resident at the time of the arrangement.

Ruling

Disposal of PEH shares to WOW NZ

28. CGT event A1 will happen when a PEH shareholder disposes of a PEH share to WOW NZ under the arrangement described in this Ruling (section 104-10 of the ITAA 1997).

29. The CGT event will happen on the Transfer Implementation Date when PEH shares are transferred to WOW NZ (subsection 104-10(3) of the ITAA 1997).

30. A PEH shareholder will make a capital gain from CGT event A1 happening if the capital proceeds for the disposal exceed the cost base of the PEH share. The PEH shareholder will make a capital loss if those capital proceeds are less than the PEH share's reduced cost base (subsection 104-10(4) of the ITAA 1997).

31. The capital proceeds for the disposal of the PEH shares will be the total of any cash received (or entitled to be received) and the market value of the WOW shares received (or entitled to be received) at the time the shareholder disposes of their PEH shares to WOW NZ (subsection 116-20(1) of the ITAA 1997).

Time of acquisition of replacement interest

32. A replacement WOW share will be acquired by a PEH shareholder when the WOW shares are issued or allotted to them (item 2 in the table in section 109-10 of the ITAA 1997).

Availability of scrip for scrip roll-over

33. PEH shareholders will be eligible to choose scrip for scrip roll-over to the extent that they receive WOW shares in exchange for their PEH shares under the Transfer Scheme if:

- (a) they acquired their PEH shares on or after 20 September 1985 (paragraph 124-780(3)(a) of the ITAA 1997);
- (b) apart from the roll-over under Subdivision 124-M, they would make a capital gain from the CGT event A1 that happens to their PEH shares (paragraph 124-780(3)(b) of the ITAA 1997); and
- (c) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement WOW share (subsection 124-795(2) of the ITAA 1997).

Consequences of roll-over where only WOW shares are received

34. If a PEH shareholder receives only WOW shares for the disposal of their PEH shares and chooses roll-over, the capital gain from the disposal will be disregarded (subsection 124-785(1) of the ITAA 1997).

35. The first element of the cost base of each WOW share received will be equal to an amount which is reasonably attributable to the cost base of each PEH share for which it was exchanged and for which roll-over was obtained (subsection 124-785(2) of the ITAA 1997). The first element of the reduced cost base is calculated similarly (subsection 124-785(4) of the ITAA 1997).

Consequences of roll-over where both WOW shares and cash are received

36. If a PEH shareholder receives WOW shares and cash for the disposal of their PEH shares and chooses roll-over, the capital gain from the disposal will be disregarded to the extent that the shareholder receives WOW shares. The capital gain is not disregarded to the extent that the shareholder receives cash for the disposal of their PEH shares (section 124-790 of the ITAA 1997).

37. The first element of the cost base of each WOW share is worked out as a portion of the cost base of the PEH share for which it was exchanged after reducing that cost base by so much of it that is attributable to the cash proceeds (subsections 124-785(2) and (3) of the ITAA 1997). The first element of the reduced cost base is calculated similarly (subsection 124-785(4) of the ITAA 1997).

Explanation

Disposal of PEH shares to WOW NZ

38. CGT event A1 (section 104-10 of the ITAA 1997) happens if there is a change in the ownership of an asset from one entity to another. This event happens when a contract to dispose of the asset is entered into or, if there is no contract, when the change of ownership occurs (subsection 104-10(3) of the ITAA 1997).

39. The time when CGT event A1 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain (subsection 104-10(3) of the ITAA 1997).

40. The Addendum to Taxation Determination TD 2002/4 indicates that a takeover or merger effected by a court approved scheme of arrangement does not involve a disposal of shares under a contract.

41. CGT event A1 therefore happens to all PEH shareholders when the PEH shares are transferred to WOW NZ on the Transfer Implementation Date.

42. The time of the CGT event A1 is also relevant in determining the capital proceeds received for each PEH share. The capital proceeds from a CGT event are the money and market value of any property received or entitled to be received, worked out at the time the CGT event happens (subsection 116-20(1) of the ITAA 1997).

43. PEH shareholders must therefore determine the market value of a WOW share at the time they dispose of their PEH shares. The Commissioner will accept the closing price of a WOW share on the Australian Stock Exchange on the date that the shareholder disposed of their PEH shares as the market value provided that the closing price does not significantly vary from the trading values in such shares over the course of the day. WOW will provide to PEH shareholders the value to be used as soon as practicable after that date.

Time of acquisition of replacement interest

44. As the WOW shares will not be acquired by a PEH shareholder under a contract, they are taken to be acquired when they are issued or allotted (item 2 in the table in section 109-10 of the ITAA 1997).

45. For CGT discount purposes, WOW shares are taken to be acquired at the time the PEH share for which it was exchanged was acquired if the shareholder has chosen scrip for scrip roll-over in respect of their PEH share (item 2 in the table in subsection 115-30(1) of the ITAA 1997).

46. Further, again for CGT discount purposes, for a shareholder who acquired the PEH share as part of the FAL Demerger Scheme and has chosen demerger roll-over and scrip for scrip roll-over, the time of acquisition of the WOW share will be taken to be the time the FAL share for which the demerger happened was acquired (item 2(b) in the table in subsection 115-30(1) of the ITAA 1997).

Availability of scrip for scrip roll-over

47. Subdivision 124-M contains a number of conditions regarding the eligibility of a shareholder to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to this arrangement are outlined below.

Subparagraph 124-780(1)(a)(i) requires an entity (a PEH shareholder) to exchange a share in a company for a share in another company

48. This requirement will be satisfied by a PEH shareholder who receives a share in WOW as consideration for the disposal of their PEH share under the Transfer Scheme. Only partial roll-over will be available for those shareholders who receive cash and WOW shares (see paragraphs 70 to 73). Roll-over will not be available where a PEH shareholder chooses to receive only cash.

Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an entity (PEH – the original entity) be exchanged in consequence of a single arrangement that results in another entity (WOW NZ – the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (PEH)

49. In the context of the scrip for scrip provisions, the acquisition of PEH shares by WOW NZ under the Transfer Scheme is considered to be a single arrangement.

50. The only issued shares in PEH are ordinary shares. These shares satisfy the definition of 'voting share' in section 995-1 of the ITAA 1997.

51. If the Transfer Scheme proceeds, WOW NZ will acquire 100% of the voting shares in PEH and therefore this requirement is satisfied.

Paragraphs 124-780(1)(b) and 124-780(2)(b) requires that the exchange of shares is in consequence of a single arrangement in which at least all owners of voting shares in the original entity (PEH) (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate

52. This requirement will be satisfied because all the owners of shares in PEH are entitled to participate in the Transfer Scheme. If the Transfer Scheme is approved, all shareholders will be required to participate.

Paragraphs 124-780(1)(b) and 124-780(2)(c) requires that the exchange is in consequence of a single arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (PEH)

53. This requirement will be satisfied as all of the ordinary shareholders in PEH are entitled to participate in the Transfer Scheme on the same terms.

54. The issue of WOW shares to a WOW agent on behalf of overseas FAL shareholders does not prevent the arrangement from being on substantially the same terms for all owners of shares in PEH, as those shareholders are entitled to elect to receive WOW shares under the terms of the Transfer Scheme.

Paragraphs 124-780(1)(c) and 124-780(3)(a) require the original interest holder (a PEH shareholder) to have acquired its original interest (PEH shares) on or after 20 September 1985

55. Roll-over will only be available for those PEH shares that were acquired on or after 20 September 1985. Paragraph 33(a) limits this Ruling in this regard.

Paragraphs 124-780(1)(c) and 124-780(3)(b) require that, apart from the roll-over, the original interest holder (a PEH shareholder) would make a capital gain from a CGT event happening in relation to its original interest (its PEH shares)

56. Whether a PEH shareholder would, apart from the roll-over, make a capital gain from the disposal of any of their shares to WOW NZ is a question of fact that is dependent on the specific circumstances of each shareholder – in particular, on the cost base of each PEH share and the value of the capital proceeds received. Paragraph 33(b) limits this Ruling in this regard.

Paragraphs 124-780(1)(c) and 124-780(3)(c) require that the replacement interest is in the acquiring entity (WOW NZ), or the ultimate holding company of the wholly owned group which includes the acquiring entity (WOW)

57. This requirement will be satisfied as the PEH shareholders receive shares in WOW. WOW is the ultimate holding company of the wholly owned group of which WOW NZ is a member.

Paragraphs 124-780(1)(c) and 124-780(3)(d) require that the original interest holder (a PEH shareholder) chooses the roll-over, or if section 124-782 applies to it for the arrangement, it and the replacement entity jointly choose to obtain the roll-over

58. Whether a shareholder chooses to obtain roll-over in relation to the disposal of a PEH share is a question of fact.

Subsection 124-780(4) of the ITAA 1997 provides that the additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a PEH shareholder) and the acquiring entity (WOW NZ) did not deal with each other at arm's length and:

- ***neither the original entity (PEH) nor the replacement entity (WOW) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a) of the ITAA 1997); or***
- ***the original interest holder (a PEH shareholder), the original entity (PEH) and the acquiring entity (WOW NZ) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b) of the ITAA 1997)***

59. Paragraph 124-780(4)(a) of the ITAA 1997 will not apply because both PEH and WOW will have at least 300 members just before the arrangement started. Section 124-810 of the ITAA 1997 will not apply to either PEH or WOW as their ownership is not concentrated in the manner contemplated by that section.

60. Paragraph 124-780(4)(b) does not apply as PEH and WOW NZ will not be members of the same linked group just before the arrangement commences.

Exceptions to obtaining scrip for scrip roll-over

Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a PEH shareholder) might make from their replacement interest (a WOW share) would be disregarded

61. Whether the capital gain arising because of the disposal of a PEH share is disregarded under another provision of the ITAA 1997 (for example, the shareholder holds their PEH shares as trading stock) is a question of fact.

Paragraph 124-795(2)(b) of the ITAA 1997 provides that roll-over is not available if the original interest holder (a PEH shareholder) and the acquiring entity (WOW NZ) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a PEH share), and the acquiring entity is a foreign resident

62. The WOW group does not own any shares in PEH. Therefore, this exception will not apply as a PEH shareholder and WOW NZ are not members of the same wholly owned-group just before the commencement of the Transfer Scheme.

Paragraph 124-795(4) of the ITAA 1997 provides that roll-over is not available for an original interest (a PEH share) in an original entity (PEH) that is a company if, just before the arrangement started, the original entity is not an Australian resident and did not have at least 300 members

63. This exception will not apply as PEH is an Australian resident and will have at least 300 members just before the commencement of the Transfer Scheme.

Consequences of roll-over

64. Scrip for scrip roll-over enables a shareholder to disregard all or part of a capital gain from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange. The cost base of the replacement share is determined by apportioning on a reasonable basis the cost base of the original share which is exchanged for it (subsections 124-785(2) and 124-785(4) of the ITAA 1997).

65. If the only capital proceeds the shareholder receives are replacement shares, the capital gain is disregarded completely (subsection 124-785(1) of the ITAA 1997). All of the cost base of the original shares can be allocated to the replacement shares (subsection 124-785(2) of the ITAA 1997).

66. If the shareholder receives other capital proceeds as well as the replacement shares, the capital gain is disregarded in part (subsection 124-790(1) of the ITAA 1997). Only a portion of the cost base of the original share can be allocated to the replacement shares (subsections 124-785(2), 124-785(3) and 124-785(4) of the ITAA 1997).

67. Under the Transfer scheme, PEH shareholders may receive a combination of WOW shares and cash in respect of their original interests in PEH.

Consequences of roll-over where only WOW shares are received

68. A PEH shareholder who receives only WOW shares for the disposal of their PEH shares can choose to roll-over all of the capital gain arising from the disposal.

69. The cost base and reduced cost base of the PEH shares will form the first element of the cost base of the WOW shares (subsections 124-785(2) and (4) of the ITAA 1997).

Consequences of roll-over where both WOW shares and cash are received

70. A PEH shareholder who receives both WOW shares and cash for the disposal of their PEH shares can choose only a partial roll-over. Roll-over will not be available to the extent that the capital gain is attributable to the cash (ineligible proceeds) received (subsection 124-790(1) of the ITAA 1997).

71. In calculating the capital gain attributable to their ineligible proceeds, a PEH shareholder should deduct from the value of those proceeds, a reasonable portion of the cost base of their PEH share (just before its disposal to the WOW NZ) (subsection 124-790(2) of the ITAA 1997).

72. In making a reasonable apportionment of the cost base of a PEH share, it would be appropriate for a shareholder to consider the value of the ineligible proceeds (the amount of the cash) and the WOW shares on the date that CGT event A1 happens to their PEH share.

73. The cost base and reduced cost base of the PEH shares, reduced by that portion that is taken into account in working out the capital gain in respect of the ineligible proceeds, will form the first element of the cost base of the WOW shares (subsections 124-785(2), (3) and (4) of the ITAA 1997).

Example

74. The following example provides guidance for shareholders to work out the capital gains consequences if they choose roll-over in respect of the disposal of their PEH shares to WOW NZ.

75. The example shows how to work out:

- a capital gain attributable to the ineligible proceeds (the amount of cash) they received; and
- the first element of the cost base of their replacement WOW shares.

76. Where a PEH shareholder works out the first element of the cost base of their WOW shares in accordance with the approach adopted in the example, the Commissioner will accept that this represents a reasonable attribution of the cost base of each WOW share. However, it is recognised that this approach may not give the only reasonable attribution.

77. *Jacob acquired 300 shares in FAL for \$4,500 in September 2001. On 10 November 2005, the Demerger Scheme and Transfer Scheme became effective. On 24 November 2005, Jacob received 300 PEH shares as part of the Demerger Scheme. Those PEH shares are subsequently transferred to the WOW NZ under the Transfer Scheme. Jacob received \$2,379 cash and 208 WOW shares in exchange.*

78. *Assuming that after the demerger a PEH share represented 70% of the value of an original FAL share, the cost base of the PEH shares would be \$3,150. The market value of a WOW share on 24 November 2005 (Transfer Implementation Date) is \$16.30.*

Capital gain attributable to ineligible proceeds

79. *Jacob chooses roll-over to apply to the extent he is able to. Jacob works out the capital gain from the ineligible proceeds using the following formula:*

$$\begin{aligned}
 \text{Ineligible proceeds} &= \$2,379.00 \\
 \text{Total proceeds} &= \$2,379.00 + (208 \times \$16.30) \\
 &= \$5,769.40 \\
 \text{Capital gain} &= \text{Ineligible proceeds} - \text{cost base of} \\
 &\quad \text{Ineligible part} \\
 \text{Cost base of} &= \text{Cost base of PEH} \times \frac{(\text{Ineligible proceeds})}{\text{Total proceeds}} \\
 \text{ineligible part} &= \$3,150.00 \times \$2,379.00 / 5,769.40 \\
 &= \$1,298.90 \\
 \text{Capital gain} &= \$2,379.00 - \$1,298.90 \\
 &= \$1,080.10
 \end{aligned}$$

Cost base of WOW shares

80. *The first element of the cost base of Jacob's WOW shares is determined by reference to the cost base of his PEH shares that was not taken into account in working out the capital gain Jacob made in respect of the ineligible proceeds. The cost base of Jacob's WOW shares will therefore be:*

Cost base of PEH shares = \$3,150.00

Cost base attributable to
ineligible proceeds = \$1,298.90 (taken into account above)

First element of cost base of
each WOW share = $(\$3,150 - \$1,298.90)/208$
= \$8.90

81. *The first element of the reduced cost base of Jacob's WOW shares will be calculated in a similar manner.*

Detailed contents list

82. Below is a detailed contents list for this Class Ruling:

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Subsection 124-780(4) of the ITAA 1997 provides that the additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a PEH shareholder) and the acquiring entity (WOW NZ) did not deal with each other at arm's length and:

- *neither the original entity (PEH) nor the replacement entity (WOW) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a) of the ITAA 1997); or*
- *the original interest holder (a PEH shareholder), the original entity (PEH) and the acquiring entity (WOW NZ) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b) of the ITAA 1997)* 59

Exceptions to obtaining scrip for scrip roll-over 61

Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a PEH shareholder) might make from their replacement interest (a WOW share) would be disregarded 61

Paragraph 124-795(2)(b) of the ITAA 1997 provides that roll-over is not available if the original interest holder (a PEH shareholder) and the acquiring entity (WOW NZ) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a PEH share), and the acquiring entity is a foreign resident 62

Paragraph 124-795(4) of the ITAA 1997 provides that roll-over is not available for an original interest (a PEH share) in an original entity (PEH) that is a company if, just before the arrangement started, the original entity is not an Australian resident and did not have at least 300 members 63

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Previous draft:

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Related Rulings/Determinations:

CR 2001/1; CR 2005/74;
 CR 2005/75; TR 92/1; TR 92/20;
 TR 97/16; TD 2002/4

Subject references:

- arrangement
- capital proceeds
- CGT event
- company
- cost base
- interests
- ordinary share
- original interest
- replacement interest
- resident
- roll-over
- scrip for scrip roll-over
- share
- shareholder
- takeover

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 115-30(1)

- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780(1)(a)(i)
- ITAA 1997 124-780(1)(b)
- ITAA 1997 124-780(1)(c)
- ITAA 1997 124-780(2)(a)
- ITAA 1997 124-780(2)(b)
- ITAA 1997 124-780(2)(c)
- ITAA 1997 124-780(3)(a)
- ITAA 1997 124-780(3)(b)
- ITAA 1997 124-780(3)(c)
- ITAA 1997 124-780(3)(d)
- ITAA 1997 124-780(4)
- ITAA 1997 124-780(4)(a)
- ITAA 1997 124-780(4)(b)
- ITAA 1997 124-780(5)
- ITAA 1997 124-782
- 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(2)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(2)(b)
- ITAA 1997 124-795(4)
- ITAA 1997 124-810
- ITAA 1997 995-1
- TAA 1953 Pt IVA
- Copyright Act 1968

ATO references

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Appendix A**Glossary of Terms**

<i>Ruling Terminology</i>	<i>Meaning</i>
<i>Certain terms used in this Ruling have the same meaning as corresponding terms in the FAL Scheme Booklet in relation to the demerger and acquisition of FAL by WOW and Metcash</i>	
Demerger Scheme	The scheme of arrangement under which FAL will divest its New Zealand operations
Transfer Implementation Date	The date on which the transfer of FAL shares to Metcash and PEH shares to Woolworths takes place
Transfer Scheme	The scheme of arrangement for the transfer of FAL shares to Metcash and for the transfer of PEH shares to Woolworths
Woolworths Action Stores	'Action' branded supermarkets and associated liquor stores in NSW, Queensland and WA as well as development sites in Queensland and WA
Woolworths Maximum Cash Consideration	The cash to be paid to PEH shareholders for the transfer of their PEH shares to WOW NZ
Woolworths Maximum Share Consideration	WOW shares to be issued to PEH shareholders for the transfer of their PEH shares to WOW NZ
Woolworths Standard Consideration	A combination of cash and WOW shares to PEH shareholders for the transfer of their PEH shares to WOW NZ