



CR 2007/113 - Income tax: merger between the Mulgrave Central Mill Company Limited and TQ Sugar Limited

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 This document has changed over time. This is a consolidated version of the ruling which was published on *5 December 2007*



Class Ruling

Income tax: merger between the Mulgrave Central Mill Company Limited and TQ Sugar Limited

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) 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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid 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.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Division 104 of the ITAA 1997;
- section 112-25 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 124-240 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are shareholders in The Mulgrave Central Mill Company Limited (MCM) who:

- hold A or B Class shares in MCM; and
- participate in the merger between MCM and TQ Sugar Limited (TQS) under the Scheme of Arrangement as set out in the Scheme Booklet dated 13 September 2007.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 22 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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 from 1 July 2007 to 30 June 2008. However, the Ruling continues to apply after 30 June 2008 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

9. 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 issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the scheme description:

- application for a Class Ruling from BDO Kendalls on behalf of shareholders in MCM received on 9 August 2007;
- Constitution of MCM dated 14 November 1893 and consolidated as at October 2007;
- Scheme Booklet dated 13 September 2007;
- Independent Expert's Report to Shareholders (Grant Thornton Corporate Finance Pty Ltd) dated 23 August 2007; and
- correspondence and emails received from the applicant in relation to the application for a Class Ruling.

14. MCM is a co-operative under section 117 of the ITAA 1936. It carries on business as a manufacturer of raw sugar at Gordonvale in Queensland from cane supplied by its members. Membership is restricted to entities involved in cane production.

15. MCM has A and B Class shares on issue. In addition there are a number of shares which are referred to as Chairman's shares which were acquired for no consideration from former suppliers of cane to the mill.

16. Rights attaching to MCM shares include the right to

- supply cane;
- receive a base payment;
- receive an equity reward (if determined); and
- receive a dividend (if determined).

17. Bundaberg Sugar Mill Limited (BBS) is engaged in the growing and milling of sugar cane, the refining of sugar, and the marketing of sugar and related products from its operations located in two coastal regions of Queensland. The operations of BBS include three mills located at Babinda, South Johnstone and the Tablelands.

18. MCM and BBS have proposed a merger of their northern Queensland milling operations and assets. The merger proposal is subject to shareholder approval.

19. Under transactions preliminary to the proposed merger, two new wholly owned subsidiaries of BBS will be formed, TQS and its wholly owned subsidiary, BBN Sugar Pty Ltd (BBN). Once these entities are formed, the northern Queensland milling assets of BBS will be transferred to BBN.

20. The proposed merger between MCM and BBS will be effected by a number of steps, including the following, under a Scheme of Arrangement to be supervised by the Queensland Supreme Court:

Step 1 – Cancellation of MCM shares registered in the name of the Chairman of MCM.

Step 2 – Article 3D of the MCM Constitution, relating to the number of shares that can be held by one shareholder, be deleted.

Step 3 – Article 90 of the MCM Constitution, relating to dividends, be deleted and replaced by new article 90.

Step 4 – Rescind MCM resolutions relating to the power of MCM directors to issue shares in MCM from time to time.

Step 5 – Increase the number of MCM shares held by A class shareholders by means of a 3 for 2 share split.

Step 6 – Convert all MCM shares to A Class shares by cancellation of B Class shares and replacement with A Class shares and nothing else. The number of replacement A Class shares received by a B Class shareholder will be calculated on the four year average quantum of cane delivered by the B Class shareholder to MCM.

Step 7 – Increase the total number of MCM shares on issue by means of a 5 for 1 share split for all A Class shareholders.

Step 8 – Payment of a cash distribution to all shareholders who delivered cane to MCM over the four years from 2003 to 2006, calculated at \$6.30 per average tonne of cane delivered.

Step 9 – Adoption by shareholders of a new Constitution for MCM to **replace** the existing Constitution.

Step 10 – Change of name from MCM to MCM Sugar Pty Ltd (MCMS).

Step 11 – After implementation of the scheme, TQS will issue TQS shares to MCMS shareholders as set out at clause 1.3 in the Scheme Booklet.

Resolutions to implement these steps will be put to MCM shareholders in sequential order.

21. Conditions precedent to implementation of the Scheme are:

- shareholder approval of the Scheme and associated resolutions in accordance with the required voting thresholds;
- court approval of the Scheme;
- regulatory consents and approvals (including by the Australian Securities and Investment Commission) in terms acceptable to MCM and BBS;
- no 'Material Adverse Changes' occurring (as defined in the Scheme Booklet 13 September 2007);
- no prescribed Occurrence occurring (as defined in the Merger Implementation Agreement); and
- the warranties given by the parties pursuant to the terms of the Merger Implementation Agreement remaining true and correct.

22. On implementation of the scheme, MCMS shareholders will hold 40% of the issued capital in TQS and MCMS will be a wholly owned subsidiary of TQS.

Ruling

Section 6-5

23. The distribution to MCM shareholders of an amount of \$6.30 per average tonne of cane delivered to MCM over the four years from 2003 to 2006 [Step 8] is assessable income in the hands of the MCM shareholders under section 6-5.

Capital gains tax

Cancellation of Chairman's shares

24. CGT event C2 in section 104-25 happens when the MCM shares registered in the Chairman's name are cancelled [Step 1].

25. The capital proceeds from the cancellation of the MCM shares registered in the Chairman's name is nil.

Share split for A class shareholders

26. No CGT events in Division 104 will happen as a result of the share conversion whereby A class shareholders receive 3 shares for every 2 shares they hold [Step 5].

27. No CGT events in Division 104 will happen as a result of the share conversion whereby A class shareholders receive 5 shares for every 1 share they hold [Step 7].

Cancellation of B class shares

28. B Class shareholders are entitled to choose roll-over relief under section 124–240 when their B Class shares are cancelled and replaced with A Class shares [Step 6].

Conversion from co-operative to company structure

29. CGT event H2 in section 104-155 happens when MCM's existing Constitution is exchanged for a new Constitution [Step 9]. However, no MCM shareholder will make a capital gain or capital loss as there are no capital proceeds because of the event, and no incidental costs are incurred in respect of the event. No other CGT event in Division 104 will happen as a result of the exchange.

Exchange of shares in MCMS for shares in TQS

30. MCMS shareholders who exchange their MCMS shares for TQS shares [Step 11] may be eligible to choose scrip for scrip roll-over under Subdivision 124–M.

31. For MCMS shareholders who are eligible and who choose scrip for scrip roll-over, the time of acquisition of their TQS shares for CGT discount purposes is when they acquired the MCM shares which were disposed of in exchange for the relevant TQS shares.

32. If a MCMS shareholder chooses scrip for scrip roll-over, the first element of the cost base (and reduced cost base) of the TQS share will be a reasonable portion of the cost base of the original MCM shares (which became MCMS shares) exchanged for the TQS share (subsection 124-785(2)). However, the cost base of the MCM shares must first be reduced by that part of the cost base that is reasonably attributable to any cash received for the MCM shares (subsections 124-785(2) and (3)).

Commissioner of Taxation

5 December 2007

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.***

Section 6-5

33. A cash distribution of \$6.30 per tonne will be made to MCM shareholders on the basis of cane delivered by each shareholder to MCM over the four financial years 2002-03 to 2005-06. The amount of the distribution is not related to the number of shares held. The amount is determined as \$6.30 per tonne of cane on the basis of the average tonnes of cane delivered to MCM by the shareholder over the past four years. Where any shareholder has not delivered any cane to MCM over the past four financial years, no distribution will be received by that shareholder.

34. The Scheme Booklet describes the reason for the distribution in the following terms:

This distribution arises from the fact that, following the Merger, MCM will have better access to banking facilities and will no longer require to effectively self-finance its own working capital as it has done to date. The distribution therefore represents a payment/distribution of this cash reserve and accordingly will be paid to shareholders on the basis of recent business conducted with MCM. It is not an over-award payment.

35. Under section 6-5 an amount is assessable if it is income according to ordinary concepts. An amount that is a product of the business operations of a taxpayer because it is part of a chain of events that links the payment to those operations is assessable to the taxpayer as income according to ordinary concepts (*Federal Commissioner of Taxation v. Squatting Investments Co Ltd* (1954) 88 CLR 413; 10 ATD 361; *Lees and Leech Pty Ltd v. Commissioner of Taxation* (1997) 97 ATC 4407, per Hill J at 4414; 36 ATR 127 at 134).

36. Shareholders who receive the cash distribution are in the business of cane growing. The distribution is only available to shareholders who have delivered cane to MCM over the previous four years and is calculated by reference to the amount of cane they have delivered.

37. The connection between the payment and the business operations of the shareholder is sufficient to characterise the distribution as assessable income from the business operations of the taxpayer.

38. The distribution is assessable income in the hands of the shareholders under section 6-5.

Capital gains tax***Cancellation of Chairman's shares***

39. Prior to the deregulation of the sugar industry in Queensland, each MCM cane farmer was required to hold an assignment of land in order to grow cane. To provide cane to the MCM mill it was also necessary that the farmer hold a share in MCM. When land ceased to be used to grow cane, those shares 'attached' to the land were worthless. They were registered in the name of the Chairman of MCM with a view to cancellation in due course under Articles 14 and 15 of the MCM Constitution. A number of shares are still held in the name of the Chairman awaiting cancellation.

40. The shares registered in the chairman's name were acquired for no consideration from former suppliers of cane to the mill and generate no capital proceeds on cancellation. Therefore, no capital gain or capital loss is made when CGT event C2 happens when the shares registered in the Chairman's name are cancelled.

Share split for A class shareholders

41. No CGT event happens to MCM A Class shareholders as a result of the 3 for 2 share conversion at [Step 5] or the 5 for 1 share conversion at [Step 7] (subsection 112-25(2)).

42. While there is a change in the form of the original shares, there is no change in the beneficial ownership. The issue of roll-over under section 124–240 does not arise as no CGT event happens to the shares.

43. The converted shares have the same date of acquisition as the original shares to which they relate. Accordingly, where the A Class original shares were held prior to 20 September 1985, the converted shares will also be treated as being held prior to 20 September 1985.

44. Where the original A Class shares were held post 20 September 1985, section 112–25 applies to attribute a proportionate cost base to the converted shares. The cost base of the original shares is apportioned over the total shares held after the conversion.

Cancellation of B class shares

45. The holding of a B Class share allows a shareholder to supply cane to MCM and entitles that person to two separate payments:

- a base payment for cane supplied (that is, **\$x** per tonne); plus
- an 'equity reward' in the nature of an 'over award' payment that depends on the economic performance of the mill which is also based on the volume of cane supplied (**\$y** per tonne).

46. The market value of each B Class share would accordingly be different except in the unusual case of two persons delivering an identical volume of cane to MCM.

47. The Scheme has adopted a formula to reflect the fact that the market value of each B Class share depends upon the volume of cane supplied by each shareholder. In the Scheme the market value is estimated on the basis of a four year average supply to even out any unusual occurrences which affected some of the shareholders.

48. For B Class shareholders to choose roll-over under section 124-240, the following requirements must be met:

- (a) you own shares (the original shares) of a certain class in a company;
- (b) the company redeems or cancels all shares of that class;
- (c) the company issues you with new shares (and you receive nothing else) in substitution for the original shares;
- (d) the market value of the new shares just after they were issued is at least equal to the market value of the original shares just before they were redeemed or cancelled;
- (e) the paid-up share capital of the company just after the new shares were issued is the same as just before the original shares were redeemed or cancelled; and
- (f) you are an Australian resident at the time of the redemption or cancellation.

(a) You own shares (the original shares) of a certain class in a company

49. As part of the merger process B Class shareholders warrant that they own, unencumbered, their B Class shares in MCM and are able to transfer them.

(b) The company redeems or cancels all shares of that class

50. MCM will cancel all B Class shares.

(c) The company issues you with new shares (and you receive nothing else) in substitution for the original shares

51. MCM will issue B Class shareholders with replacement A Class shares. The number of A Class shares received is calculated on the four year average quantum of cane delivered by the B Class shareholder to MCM. MCM B Class shareholders will receive nothing else in substitution for the original shares.

(d) The market value of the new shares just after they were issued is at least equal to the market value of the original shares just before they were redeemed or cancelled

52. As stated above, the Scheme has adopted a formula to reflect the fact that the market value of each B Class share depends upon the volume of cane supplied by each shareholder. In the Scheme the market value is estimated on the basis of a four year average supply of cane to even out any unusual occurrences which affected some of the shareholders.

53. The number of A Class shares to be received in exchange for B Class shares is also based on the four year average supply of cane. This allocation methodology is designed to ensure B Class shareholders receive a fair proportion of the value of MCM when their shares are cancelled and replaced with A Class shares. The Independent Expert's Report supports this methodology. As such it is considered the market value of A Class shares just after they are issued will be at least equal to the market value of the B Class shares just before they are cancelled.

(e) The paid-up share capital of the company just after the new shares were issued is the same as just before the original shares were redeemed or cancelled

54. The paid up share capital of MCM is the same just after the A Class shares were issued as it was before the B Class shares were cancelled.

(f) You are an Australian resident at the time of the redemption or cancellation

55. All B Class shareholders are Australian residents at the relevant time.

56. As all the conditions in section 124–240 are satisfied, the exchange of B Class shares for A Class shares will constitute a replacement asset roll-over and allow the deferral of any capital gain realised on the exchange until such time as the replacement A Class shares are disposed of by the former B Class shareholders.

57. All B Class shares were issued on or after 20 September 1985 so all are post CGT assets.

58. The cost base of B Class shares will be allocated over the replacement A Class shares received.

Change of company structure

59. CGT event H2 in section 104-155 happens if an act, transaction or event occurs in relation to a CGT asset and the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base.

60. CGT event H2 will happen on the conversion of MCM's existing Constitution to the new Constitution as this is an act, transaction or event in relation to the MCM shares that does not result in an adjustment being made to the cost base or reduced cost base of the share.

61. A capital gain is made if the capital proceeds from CGT event H2 are more than the incidental costs incurred in relation to the event. A capital loss is made if the capital proceeds are less than the incidental costs.

62. Subsection 116-20(2) provides that the capital proceeds from CGT event H2 happening is the money or other consideration received, or entitled to be received, because of the act, transaction or event. Paragraph 29 of Taxation Ruling TR 95/3 provides that 'consideration' for these purposes can include the benefit of mutual promises flowing to parties even if those promises are not in themselves property.

63. In this case the Commissioner does not consider that the conversion of MCM's existing Constitution to the new Constitution constitutes capital proceeds because of the H2 event happening.

64. It is only when a subsequent CGT event happens to the MCM shares that any capital proceeds may be received. When that CGT event happens, any capital proceeds would relate to the subsequent CGT event and not to the CGT event H2 that happened on the conversion of the MCM constitution.

65. Therefore, MCM shareholders will make no capital gain or capital loss from the happening of CGT event H2 as there are no capital proceeds because of the event and no incidental costs are incurred by the MCM shareholders in respect of the event.

Exchange of shares in MCMS for shares in TQS

66. The scrip for scrip roll-over provisions under Subdivision 124-M enable a shareholder to disregard a capital gain they make from a share that is disposed of as part of a corporate restructure, including a merger, if the shareholder receives a replacement share in exchange.

67. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a shareholder to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the Scheme that is the subject of this Ruling are:

- (a) shares are exchanged for shares in another company;

- (b) the exchange occurs as part of a single arrangement;
- (c) conditions for roll-over are satisfied;
- (d) further conditions are not applicable; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

(a) Shares are exchanged for shares in another company

68. Paragraph 124-780(1)(a) requires an entity (the original interest holder) to exchange a share for a share in another company.

69. This requirement is satisfied by a MCMS shareholder who will receive TQS shares as the capital proceeds for the disposal of their MCMS shares under the Scheme.

(b) The exchange occurs as part of a single arrangement

70. Paragraph 124-780(1)(b) requires that shares in an entity be exchanged in consequence of a single arrangement.

71. In the context of scrip for scrip roll-over, the merger of MCMS and TQS under the Scheme is considered to be a single arrangement. The single arrangement must also satisfy the following conditions.

80% ownership

72. Paragraph 124-780(2)(a) requires that shares in an entity be exchanged in a single arrangement that results in another entity becoming the owner of 80% or more of the voting shares in the original entity.

73. This requirement will be satisfied as TQS (the acquiring entity) will become the owner of all the ordinary shares in MCMS (the original entity) following the Scheme. Each of the ordinary shares satisfies the definition of a 'voting share' in subsection 995-1(1).

All voting share owners participate

74. Paragraph 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 (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate.

75. This requirement will be satisfied because all MCMS shareholders will be entitled to participate in the Scheme.

Participation is on substantially the same terms

76. Paragraph 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.

77. This requirement will be satisfied because the Scheme provides that all MCMS shareholders will be entitled to participate in the Scheme on the same terms.

(c) Conditions for roll-over

78. Paragraph 124-780(1)(c) requires that the conditions for roll-over outlined in subsection 124-780(3) are met. These conditions must be met in relation to each MCMS share for which scrip for scrip roll-over will be chosen.

79. The conditions in subsection 124-780(3) are as follows.

The MCMS shares are post-CGT shares

80. Paragraph 124-780(3)(a) requires that the original interest holder acquired their original interests on or after 20 September 1985.

81. As such only MCMS shareholders who acquired their original MCM A Class or B Class shares on or after 20 September 1985 will be eligible for scrip for scrip roll-over.

A MCMS shareholder would otherwise make a capital gain

82. Paragraph 124-780(3)(b) requires that, apart from the rollover, the original interest holder would make a capital gain from a CGT event happening in relation to its original interest.

83. A capital gain will be made from the disposal of a MCMS share if the capital proceeds for the share are more than its cost base. Therefore, whether this condition is met will depend on the individual circumstances of the MCMS shareholder.

MCMS shareholders receive replacement interests in the acquiring entity or the ultimate holding company

84. Paragraph 124-780(3)(c) requires that the replacement interest is in the acquiring entity or the ultimate holding company of the wholly owned group which includes the acquiring entity.

85. This requirement will be satisfied as the MCMS shareholders will receive shares in TQS (the acquiring entity).

A MCMS shareholder must choose to obtain scrip for scrip roll-over

86. Paragraph 124-780(3)(d) requires that the original interest holder chooses the roll-over, or if section 124-782 applies, the original interest holder and the replacement entity jointly choose to obtain the roll-over.

87. Section 124-782 has no application in the Scheme since there are no significant stakeholders or common stakeholders under the arrangement.

88. Subject to their eligibility, whether a MCMS shareholder chooses to obtain roll-over in relation to the disposal of a MCMS share is a question of fact to be determined for each individual shareholder.

(d) Further conditions are not applicable

89. Subsection 124-780(4) provides that the additional requirements in subsection 124-780(5) must be satisfied if the original interest holder and the acquiring entity did not deal with each other at arm's length and:

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

90. Subsection 124-780(4) will not apply because MCMS and TQS are dealing with each other at arm's length.

(e) Exceptions to obtaining scrip for scrip roll-over

91. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen. The exceptions in section 124-795 are as follows.

MCMS shareholders are residents of Australia

92. Subsection 124-795(1) provides that roll-over is not available if, just before the disposal, the original interest holder is a foreign resident unless, just after the acquisition of the replacement interest, the replacement interest is taxable Australian property.

93. All MCMS shareholders are Australian residents at the time of the Scheme. As a consequence, the exception in subsection 124-795(1) will not apply to limit this Ruling in that regard.

A capital gain cannot (apart from the roll-over) be otherwise disregarded

94. Paragraph 124-795(2)(a) provides that the roll-over is not available if any capital gain the original interest holder might make from their replacement interest would be disregarded (except because of a roll-over).

95. Whether a capital gain arising from the disposal of a MCMS share will be disregarded under another provision of the ITAA 1997 (for example, the MCMS shares are trading stock held by the MCMS shareholder) is a question of fact for each shareholder.

Acquiring entity is not a foreign resident

96. Paragraph 124-795(2)(b) provides that the roll-over is not available if the original interest holder and the acquiring entity are members of the same wholly owned group just before the original interest holder stops owning their original interest and the acquiring entity is a foreign resident.

97. This exception will not apply as the MCMS shareholders and TQS will not be members of the same wholly-owned group just before the proposed Scheme is implemented. In addition, TQS is not a foreign resident company.

No roll-over is available under Division 122 or Subdivision 124-G

98. Subsection 124-795(3) provides that the roll-over is not available if a roll-over can be chosen under Division 122 or Subdivision 124-G.

99. This exception will not apply as the circumstances of the Scheme are such that a roll-over pursuant to Division 122 or Subdivision 124-G is not available.

Consequences of roll-over

100. 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 take over or merger if the shareholder receives a replacement share in exchange.

101. If the only capital proceeds a MCMS shareholder receives are replacement shares in TQS, and the shareholder is eligible for and chooses the roll-over, the capital gain is disregarded completely (subsection 124-785(1)). The first element of the cost base (and reduced cost base) of each TQS share is determined by reasonably attributing to it the cost base of the MCMS shares given to acquire the replacement TQS share (subsection 124-785(2)).

102. For MCMS shareholders who choose scrip for scrip roll-over, the acquisition date of the TQS shares for CGT discount purposes will be the date they acquired the original MCM shares that were disposed of for the replacement TQS shares (item 2 in the table in subsection 115-30(1)).

Partial roll-over

103. If the capital proceeds paid to MCMS shareholders in respect of their MCMS shares includes any cash consideration, a MCMS shareholder will be able to choose only partial roll-over. The capital gain that relates to the cash consideration is not disregarded (subsection 124-790(1)).

104. In determining the first element of the cost base (and reduced cost base) of each TQS share, the cost base of the MCMS shares will be reduced by that part of the cost base which is reasonably attributable to the cash consideration (ineligible proceeds) (subsections 124-785(2), 124-785(3) and subsection 124-790(2)).

Consequences where MCM shares held prior to 20 September 1985

105. Any capital gain or capital loss made on the disposal of MCMS shares acquired before 20 September 1985 (pre-CGT MCMS shares) is disregarded (paragraph 104-10(5)(a)).

106. Paragraph 124-780(3)(a) requires, as a condition for roll-over, that the original interest holder (a MCMS shareholder) acquired their original interest (a MCMS share) on or after 20 September 1985. Accordingly, roll-over is not available for pre-CGT MCMS shares (paragraph 124-780(3)(a)).

107. The first element of the cost base (and reduced cost base) of the TQS shares acquired in exchange for the pre-CGT MCMS shares will be the market value of the TQS shares just after they were acquired (subsection 124-800(1)).

108. However, if CGT event K6 happens, the cost base (and reduced cost base) of the TQS shares acquired in exchange for the pre-CGT MCMS shares will be reduced by the amount of the capital gain that is disregarded had the MCMS shares been acquired on or after 20 September 1985 and roll-over could have been chosen by the MCMS shareholder (subsection 124-800(2)).

109. CGT event K6 in section 104-230 happens if a MCMS shareholder disposes of pre-CGT MCMS shares and the market value of assets acquired on or after 20 September 1985 by the reconstituted MCMS represents 75% or more of the net market value of MCMS.

Appendix 2 – Detailed contents list

110. The following is a detailed contents list for this Ruling:

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References

Previous draft:

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Subject references:

- assessable income
- capital gain
- CGT event
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- co-operative company
- distribution
- incorporation
- ordinary income
- shareholders shares

Legislative references:

- ITAA 1936 117
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 Div 104
- ITAA 1997 104-10(5)(a)
- ITAA 1997 104-25
- ITAA 1997 104-155
- ITAA 1997 104-230
- ITAA 1997 112-25
- ITAA 1997 112-25(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(2)
- ITAA 1997 Division 122
- ITAA 1997 124-240
- ITAA 1997 Subdiv 124-G
- ITAA 1997 Subdiv 124-M
- 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(2)(b)
- ITAA 1997 124-780(2)(c)
- ITAA 1997 124-780(3)
- 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 124-790(1)
- ITAA 1997 124-790(2)
- ITAA 1997 124-795
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(2)(b)
- ITAA 1997 124-795(3)
- ITAA 1997 124-800(1)
- ITAA 1997 124-800(2)
- ITAA 1997 995-1(1)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- Federal Commissioner of Taxation v. Squatting Investments Co Ltd (1954) 88 CLR 413; 10 ATD 361
- Lees and Leech Pty Ltd v. Commissioner of Taxation (1997) 97 ATC 4407; (1997) 36 ATR 127

ATO references

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