


CR 2008/66 - Income tax: scrip for scrip: acquisition of Just Group Limited by Premier Investments Limited

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Class Ruling

Income tax: scrip for scrip: acquisition of Just Group Limited by Premier Investments Limited

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	24
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	42
Appendix 2:	
<i>Relevant closing price or VWAP of a PMV share on the ASX</i>	46
Appendix 3:	
<i>Detailed contents list</i>	47

ⓘ 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provisions 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:

- paragraph 98(3)(b) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- subsection 98(4) of the ITAA 1936;
- section 99A of the ITAA 1936;
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- section 115-10 of the ITAA 1997;

- section 115-30 of the ITAA 1997;
- section 115-220 of the ITAA 1997;
- section 115-222 of the ITAA 1997;
- section 115-225 of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 116-40 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless indicated otherwise.

Class of entities

3. The class of entities to whom this Ruling applies consists of entities who were ordinary shareholders of Just Group Limited (JST) at the time of the scheme, and who:

- (a) held their JST shares on capital account at the time of this scheme;
- (b) accepted the Offer made by Premier Investments Limited (PMV) to acquire their JST shares or had their shares compulsorily acquired pursuant to Part 6A.1 of the *Corporations Act 2001*; and
- (c) were 'residents of Australia' within the meaning of that expression in subsection 6(1) of the ITAA 1936.

In this Ruling, a person belonging to this class of entities is referred to as a 'JST shareholder'.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this 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 9 to 23 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 23 April 2008 to 30 June 2009. The Ruling continues to apply after 30 June 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on documents and information provided by BDO Kendalls (the applicant for this Ruling). Those documents include:

- (a) PMV Bidder's Statement dated and lodged with the Australian Securities and Investment Commission (ASIC) on 23 April 2008 and posted to JST shareholders on 23 April 2008 (Bidder's Statement);
- (b) PMV Supplementary Bidder's Statement dated and lodged with ASIC on 13 May 2008 and posted to JST shareholders on 19 May 2008 (Supplementary Bidder's Statement);
- (c) PMV Second Supplementary Bidder's Statement dated and lodged with ASIC on 11 June 2008 and posted to JST shareholders on 11 June 2008 (Second Supplementary Bidders Statement); and
- (d) PMV Third Supplementary Bidder's Statement dated and lodged with ASIC on 23 July 2008 and posted to JST shareholders on 23 July 2008 (Third Supplementary Bidders Statement).

Overview

10. The scheme that is the subject of this Ruling involves the takeover by PMV of JST.

Relevant entities

JST

11. JST was, at the time of the scheme, an Australian resident company listed on the Australian Securities Exchange (ASX). JST is engaged in the business of a specialty fashion retailer.

12. JST had, at the time of the scheme, approximately 201.3 million ordinary shares on issue. Approximately 45.8 million (22.8%) of those ordinary shares were owned by interests associated with Mr Solomon Lew, the Chairman of PMV (these shares were owned by Metrepark Pty Ltd (41.2 million ordinary shares) and Springsand Investments Pty Ltd (4.6 million ordinary shares)).

13. There were no other types of shares on issue in JST at the time of this scheme.

PMV

14. PMV is also an Australian resident company listed on the ASX. It is an investment company with significant holdings in a company called Housewares International Pty Ltd, and money market deposits.

The takeover

15. On 31 March 2008, PMV announced its intention to make an offer to acquire shares in JST.

16. PMV posted its Bidders Statement to the JST shareholders on 23 April 2008 offering to acquire all of the shares in JST. This was followed by three Supplementary Bidders Statements, posted to JST shareholders on 19 May 2008, 11 June 2008 and 23 July 2008 respectively (collectively, the Offer). Relevantly, the Offer:

- contained a number of conditions set out in section 12.9 of the Offer including that before the end of the offer period, PMV must have a relevant interest in more than 50% of the number of JST shares then on issue;
- included in section 12.10, a stipulation that the conditions referred to in section 12.9 were 'conditions subsequent' such that the non-satisfaction of any such condition would not prevent the formation of a contract for the disposal of JST shares; and

- prescribed that JST shareholders could accept the Offer either by completing and lodging the Acceptance Form or by participating in the Acceptance Facility.

17. The Acceptance Facility enabled wholesale JST shareholders to lodge acceptance instructions with UBS Securities Australia Ltd (the Facility Agent). The acceptance instructions directed the Facility Agent to deliver formal acceptances of the Offer on behalf of the JST shareholders once PMV had provided confirmation that the Offer had become unconditional. This confirmation was provided to the Facility Agent, and these formal acceptances were delivered to PMV, on 5 August 2008.

18. On 10 October 2008, PMV completed the compulsory acquisition of all of the JST shares by compulsory acquisition pursuant to the terms of Part 6A.1 of the *Corporations Act 2001*.

19. Therefore, in accordance with the terms of the takeover offer, PMV paid the following consideration for each JST ordinary share:

- \$2.245 cash; and
- 0.25 PMV shares.

(Fractional entitlements to PMV shares were rounded up to the nearest whole number of PMV shares.)

Foreign shareholders

20. Under the Offer, the PMV shares to which some foreign JST shareholders would otherwise have been entitled were issued to a nominee for sale in accordance with subsection 619(3) of the *Corporations Act 2001* and the proceeds were distributed to those foreign JST shareholders, net of expenses.

Other matters

21. There were no 'significant stakeholders' or 'common stakeholders' in relation to the scheme within the meaning of those expressions in section 124-783.

22. For the purposes of subsections 124-780(4) and (5), no original interest holder in JST was, just before the relevant arrangement started, a member of a linked group which included JST and PMV.

23. All of the ordinary shares in JST were acquired on or after 20 September 1985.

Ruling

CGT event A1 happened on the disposal of JST shares

24. CGT event A1 happened as a result of the disposal by a JST shareholder of each JST share to PMV (subsections 104-10(1) and (2)).

25. Where a JST shareholder accepted the Offer, CGT event A1 happened on the day the JST shareholder entered into the contract to dispose of their JST shares to PMV (paragraph 104-10(3)(a)).

26. Where a JST shareholder did not accept the Offer, and had their shares compulsorily acquired, CGT event A1 happened when PMV became the owner of the relevant JST shares (10 October 2008) (subsection 104-10(6)).

Capital gain or capital loss

27. A JST shareholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a JST share exceeded its cost base. A JST shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the JST share (subsection 104-10(4)).

Capital proceeds

28. The capital proceeds for the disposal of each JST share is the sum of:

- (a) \$2.245; and
- (b) that part of the total market value of a PMV share received (worked out as at the time that CGT event A1 happened to the JST shareholder) as is reasonably attributable to the disposal of the JST share (subsections 116-20(1) and 116-40(1)).

29. In working out the market value of the part of a PMV share that is reasonably attributable to the disposal of each JST share the Commissioner accepts the following formula:

$$\text{Market Value of PMV share} \times \frac{\text{Total number of PMV shares received}}{\text{Total number of JST shares exchanged}}$$

30. The Commissioner will accept the closing price on the ASX of a PMV share (on the date that CGT event A1 happened to the JST shareholder) as the market value of a PMV share received, provided that the closing price does not vary by more than 5% from either the minimum or maximum traded price over the course of the day. If the closing price does vary by more than 5% the Commissioner will accept the volume-weighted average price (VWAP) for the shares over the day as representing the market value of the share for that day. PMV has provided the Commissioner with the relevant prices (see Appendix 2 at paragraph 46 of this Ruling).

If a capital gain is made

Capital gain referable to PMV shares – partial scrip for scrip roll-over

31. Subject to the qualification in paragraph 32 of this Ruling, a JST shareholder who made a capital gain from the disposal of their JST shares may choose partial scrip for scrip roll-over from the disposal of their JST shares (section 124-790).

32. Scrip for scrip roll-over cannot be chosen if any capital gain the JST shareholder might make from the replacement PMV shares would be disregarded, except because of a roll-over (subsection 124-795(2)).

33. If scrip for scrip roll-over is chosen, that part of the capital gain that is referable to the receipt of PMV shares is disregarded (subsection 124-790(1)).

Capital gain referable to cash

34. The part of the capital gain that is referable to the receipt of cash is not disregarded. This is because the cash received is ineligible proceeds under subsection 124-790(1).

35. The part of the capital gain on a JST share that is referable to the receipt of cash is the ineligible proceeds (\$2.245) less the part of the cost base of the JST share reasonably attributable to the receipt of cash. In working out the part of the cost base of a JST share that is reasonably attributable to the receipt of cash, the Commissioner accepts the following formula:

$$\begin{array}{rcl} \text{Cost base of JST share} & & \\ \text{reasonably attributable} & & \\ \text{to receipt of cash} & = & \text{Cost base of} \\ & & \text{the JST} \\ & & \text{share at the} \\ & & \text{time of the} \\ & & \text{CGT event} \end{array} \times \frac{\$2.245}{(\$2.245 + \text{The market value of the part of a PMV share that is reasonably attributable to the disposal of the JST share})}$$

Discount capital gain

36. JST shareholders who received PMV shares and made capital gains that are not disregarded (that is, capital gains relating to the cash consideration and capital gains where scrip for scrip roll-over is not chosen) are eligible to treat any resulting capital gain as a 'discount capital gain' provided that:

- the JST shareholder is an individual, complying superannuation entity or, subject to paragraph 37 of this Ruling, a trust (section 115-10);
- the capital gain has been calculated using a cost base that has been calculated without reference to indexation at any time; and
- the JST shares had been held for at least 12 months before the CGT event.

37. Where the JST shareholder is a trust, sections 115-220, 115-222 and 115-225 of the ITAA 1997 apply where the trustee is assessed under paragraph 98(3)(b) of the ITAA 1936, subsection 98(4) of the ITAA 1936 or section 99A of the ITAA 1936.

Cost base of PMV shares

Scrip for scrip roll-over is not chosen

38. Where scrip for scrip roll-over is not chosen, the first element of the JST shareholder's cost base and reduced cost base of each PMV share is equal to the market value of the part of the JST shares given in exchange for the PMV share (subsections 110-25(2) and 110-55(2)).

Scrip for scrip roll-over is chosen

39. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each new PMV share is equal to the part of the cost bases of the JST shares exchanged for the relevant PMV share (that is, the part of the cost base of the JST shares that does not relate to the cash consideration received) (subsections 124-785(2) and 124-785(4)).

Acquisition date of PMV shares

40. JST shareholders acquired their PMV shares:
- when they entered into the contract to dispose of their JST shares by accepting the Offer (for those who participated in the Acceptance Facility this was 5 August 2008); or
 - if their JST shares were acquired by PMV by way of compulsorily acquisition, when they became the owner of the PMV shares (on 10 October 2008) (item 2 in the table in section 109-10).
41. However, for the purposes of applying the CGT discount to any later disposal of their PMV shares, JST shareholders who choose scrip for scrip roll-over under the Offer are taken to have acquired their PMV shares when they acquired the corresponding JST shares (item 2 in the table in subsection 115-30(1)).

Commissioner of Taxation29 October 2008

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.*

42. The tax consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

43. The significant tax consequence is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables a shareholder to disregard 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. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

44. Subdivision 124-M contains a number of conditions that go to whether scrip for scrip roll-over may be available under an arrangement. The main conditions and exceptions that are relevant to the circumstances of the takeover of JST 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 or are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

45. Under the Offer the conditions for roll-over under Subdivision 124-M are satisfied. Further, the Offer raises no novel issues of tax law interpretation and no further explanation of the application of those tax laws beyond that contained in the Ruling part of this document is necessary.

Appendix 2 – Relevant closing price or VWAP of a PMV share on the ASX

ⓘ *This Appendix does not form part of the binding public ruling.*

46. The following is a list of the relevant closing price or VWAP(*) of a PMV share on the ASX during the offer period and on the date of compulsory acquisition. This information has been provided to the Commissioner by PMV. As such the Commissioner does not guarantee its accuracy.

Date	Relevant closing price or VWAP(*) of a PMV share on the ASX
19-May-08	\$ 7.73
20-May-08	\$ 7.75
21-May-08	\$ 7.54
22-May-08	\$ 7.52
23-May-08	\$ 7.60
26-May-08	\$ 7.60
27-May-08	\$ 7.60
28-May-08	\$ 7.80
29-May-08	\$ 7.80
30-May-08	\$ 7.83
2-Jun-08	\$ 7.80
3-Jun-08	\$ 7.80
4-Jun-08	\$ 7.84
5-Jun-08	\$ 7.84
6-Jun-08	\$ 7.82
10-Jun-08	\$ 7.80
11-Jun-08	\$ 7.52
12-Jun-08	\$ 7.60
13-Jun-08	\$ 7.51
16-Jun-08	\$ 7.51
17-Jun-08	\$ 7.50
18-Jun-08	\$ 7.50
19-Jun-08	\$ 7.45
20-Jun-08	\$ 7.50
23-Jun-08	\$ 7.45
24-Jun-08	\$ 7.40
25-Jun-08	\$ 7.50
26-Jun-08	\$ 7.50
27-Jun-08	\$ 7.70
30-Jun-08	\$ 7.70
1-Jul-08	\$ 7.70
2-Jul-08	\$ 7.70
3-Jul-08	\$ 7.70
4-Jul-08	\$ 7.70

CR 2008/66

7-Jul-08	\$ 7.70
8-Jul-08	\$ 7.12
9-Jul-08	\$ 7.19
10-Jul-08	\$ 7.30
11-Jul-08	\$ 7.25
14-Jul-08	\$ 7.15
15-Jul-08	\$ 7.13
16-Jul-08	\$ 6.99
17-Jul-08	\$ 6.99
18-Jul-08	\$ 7.05
21-Jul-08	\$ 7.09
22-Jul-08	\$ 7.09
23-Jul-08	\$ 7.10
24-Jul-08	\$ 7.10
25-Jul-08	\$ 7.12
28-Jul-08	\$ 7.12
29-Jul-08	\$ 7.12
30-Jul-08	\$ 7.19
31-Jul-08	\$ 7.06
1-Aug-08	\$ 7.14
4-Aug-08	\$ 7.00
5-Aug-08	\$ 7.00
6-Aug-08	\$ 7.00
7-Aug-08	\$ 6.92
8-Aug-08	\$ 5.99
11-Aug-08	\$ 6.18
12-Aug-08	\$ 6.14
13-Aug-08	\$ 5.60
14-Aug-08	\$ 5.34
15-Aug-08	\$ 5.59
18-Aug-08	\$ 5.70
19-Aug-08	\$ 5.71 *
20-Aug-08	\$ 6.18
21-Aug-08	\$ 6.18
22-Aug-08	\$ 5.79
25-Aug-08	\$ 5.35
26-Aug-08	\$ 5.09 *
27-Aug-08	\$ 5.21 *
28-Aug-08	\$ 5.40
29-Aug-08	\$ 5.53 *
1-Sep-08	\$ 5.57
2-Sep-08	\$ 5.51
3-Sep-08	\$ 5.50
10-Oct-08	\$ 4.52

Appendix 3 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Overview	10
Relevant entities	11
<i>JST</i>	11
<i>PMV</i>	14
The takeover	15
Foreign Shareholders	20
Other matters	21
Ruling	24
CGT event A1 happened on the disposal of JST shares	24
<i>Capital gain or capital loss</i>	27
<i>Capital proceeds</i>	28
If a capital gain is made	31
<i>Capital gain referable to PMV shares – partial scrip for scrip roll-over</i>	31
<i>Capital gain referable to cash</i>	34
<i>Discount capital gain</i>	36
Cost base of PMV shares	38
<i>Scrip for scrip roll-over is not chosen</i>	38
<i>Scrip for scrip roll-over is chosen</i>	39
Acquisition date of PMV shares	40
Appendix 1 – Explanation	42
Appendix 2 – Relevant closing price or VWAP of a PMV share on the ASX	46
Appendix 3 – Detailed contents list	47

References

- Previous draft:*
- ITAA 1997 104-10(4)
- Not previously issued as a draft
- ITAA 1997 104-10(6)
 - ITAA 1997 109-10
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- Subject references:*
- arrangement
 - CGT capital proceeds
 - CGT event A1 – disposal of a CGT asset
 - CGT events
 - CGT cost base
 - CGT roll-over relief
 - disposal of shares
 - market value cost base
 - ordinary share
 - schemes of arrangement
 - scrip for scrip roll-over
 - shareholders
- Legislative references:*
- ITAA 1936 6(1)
 - ITAA 1936 98(3)(b)
 - ITAA 1936 98(4)
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