


CR 2008/87 - Income tax: scrip for scrip roll-over: exchange of shares in Bandanna Coal Pty Ltd for shares in Enterprise Energy Ltd

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Class Ruling

Income tax: scrip for scrip roll-over: exchange of shares in Bandanna Coal Pty Ltd for shares in Enterprise Energy Ltd

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① 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 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:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);¹
- section 109-10;
- section 110-25;
- section 110-55;
- Subdivision 115-A;
- section 116-20; and
- Subdivision 124-M.

¹ All subsequent legislative references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies consists of the ordinary shareholders of Bandanna Coal Pty Ltd (Bandanna) who:

- were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* on the date they disposed of their Bandanna shares under the scheme to which this Ruling relates; and
- held their Bandanna shares on capital account on that date.

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

Qualifications

4. 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 8 to 18 of this Ruling.

5. 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

7. This Ruling applies from 1 July 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

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

- Class Ruling application, dated 9 September 2008;
- Heads of Agreement relating to the acquisition of shares in Bandanna, between Enterprise Energy Limited, Bandanna and the Bandanna shareholders (the Vendors), dated 2 May 2008;
- Share Sale Agreement, between the Vendors, Enterprise Energy Limited and Bandanna, dated 2 September 2008; and
- correspondence with the applicant, dated 16 October 2008.

Note: certain information has been provided by the applicant on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

9. Bandanna is an Australian resident private company.

10. As at 2 May 2008, Bandanna had 740,411 fully paid ordinary shares on issue. Each share carried the same rights to vote, receive dividends and receive capital. Bandanna did not have any other class of shares on issue, nor did it have on issue any options over Bandanna shares or other interests.

11. Enterprise Energy Limited (Enterprise) was an Australian resident company listed on the Australian Securities Exchange.

12. On 2 May 2008, Enterprise entered into a Heads of Agreement to acquire all of the issued shares in Bandanna. The details of the acquisition were embodied in the Share Sale Agreement dated 2 September 2008, the parties to which were Enterprise, Bandanna and the Bandanna shareholders.

13. Under clause 2.1 of the Share Sale Agreement, completion of the sale of the Bandanna shares was subject to the satisfaction or waiver of certain conditions precedent before 1 October 2008 (the Conditions Date). Under clause 2.4, if one or more of the conditions precedent were not satisfied or waived, a party that had complied with its obligations was entitled to terminate the Share Sale Agreement by written notice.

14. Pursuant to the Share Sale Agreement, all of the Bandanna shareholders transferred their Bandanna shares to Enterprise on 26 September 2008. Before that date, Enterprise did not own any shares in Bandanna.

15. Under the Share Sale Agreement, in consideration for the sale of Bandanna shares to Enterprise, Bandanna shareholders received in exchange a total of 3,018,750,000 ordinary shares in Enterprise. These shares were divided among Bandanna shareholders in proportion to their holdings of Bandanna shares. After the exchange of shares, Enterprise implemented a 1 for 10 consolidation of its share capital. As a result of the scheme, the Bandanna shareholders held 301,875,000 ordinary shares in Enterprise immediately after the consolidation.

16. Enterprise changed its name to Bandanna Energy Limited after acquiring all of the shares in Bandanna.

17. The Bandanna shareholders acquired all of the ordinary shares in Bandanna on or after 20 September 1985.

18. Bandanna did have a 'significant stakeholder', but did not have a 'common stakeholder', in relation to the scheme within the meaning of those expressions in section 124-783.

Ruling

CGT event A1 happened on the disposal of Bandanna shares to Enterprise

19. CGT event A1 happens if there is a disposal of a CGT asset (section 104-10).

20. The disposal of Bandanna shares (and hence CGT event A1) happened when the Bandanna shareholders entered into the Share Sale Agreement (which was a contract for disposal) on 2 September 2008 (paragraph 104-10(3)(a)).

Capital gain or capital loss

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

Capital proceeds

22. Under subsection 116-20(1), the capital proceeds from CGT event A1 are the total of the money, and the market value of any other property (such as the Enterprise shares), received or entitled to be received in respect of the disposal of the Bandanna shares. The market value of the property is worked out as at the time of CGT event A1 happening (the date when the Bandanna shareholders entered into the Share Sale Agreement).

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

23. Subject to the qualification in paragraph 24 of this Ruling, Bandanna shareholders who made a capital gain from the disposal of a Bandanna share to Enterprise may choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

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

25. The only capital proceeds received by a Bandanna shareholder were shares in Enterprise. Therefore, if scrip for scrip roll-over is chosen, the capital gain a Bandanna shareholder made upon the disposal of a Bandanna share to Enterprise is disregarded completely (subsection 124-785(1)).

26. If section 124-782 applies to a Bandanna shareholder (that is, they are a significant stakeholder or a common stakeholder), that shareholder and Enterprise must jointly choose to obtain the roll-over. Furthermore, that shareholder must inform Enterprise in writing of the cost base of their Bandanna shares worked out just before the disposal of those shares to Enterprise.

Discount capital gain

27. A Bandanna shareholder who made a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the Bandanna shares must have been acquired by the shareholder at least 12 months before their disposal to Enterprise.

Cost base of Enterprise shares

Scrip for scrip roll-over is not chosen

28. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the shareholder's cost base and reduced cost base of each Enterprise share is equal to:

- the market value of the property (the part of the Bandanna share) given in respect of acquiring each Enterprise share, worked out as at the time of the acquisition (subsections 110-25(2) and 110-55(2)).

Scrip for scrip roll-over is chosen

29. If a Bandanna shareholder chooses the roll-over, the first element of the cost base and reduced cost base of a replacement Enterprise share is worked out by reasonably attributing to it the part of the cost base of the Bandanna share for which it was exchanged (subsections 124-785(2) and 124-785(4)).

Acquisition date of Enterprise shares

30. Bandanna shareholders acquired the Enterprise shares in exchange for their Bandanna shares on the date when the contract (the Share Sale Agreement) was entered into, being 2 September 2008 (item 2 of the table in section 109-10).

31. However, for the purposes of applying the CGT discount to any later disposal of their Enterprise shares, Bandanna shareholders who choose scrip for scrip roll-over are taken to have acquired their Enterprise shares when they acquired the original Bandanna shares involved in the roll-over (item 2 of the table in subsection 115-30(1)).

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.*

Scrip for scrip roll-over – Subdivision 124-M

32. 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.

33. 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.

34. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- (a) shares are exchanged for shares in another company;
- (b) the exchange is in consequence of a single arrangement;
- (c) conditions for the roll-over are satisfied;
- (d) further conditions, if applicable, are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

35. The scheme satisfies the requirements for roll-over under Subdivision 124-M. Further, the scheme 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 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- scrip for scrip roll-over

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(a)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 110-25
- ITAA 1997 110-25(2)

- ITAA 1997 110-55
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-782
 - ITAA 1997 124-783
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - TAA 1953
 - Copyright Act 1968
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ATO references

NO: 2008/18490

ISSN: 1445-2014

ATOlaw topic: Income tax – scrip for scrip roll-over