


# ***CR 2010/6 - Income tax: scrip for scrip: exchange of Unilife Medical Solutions Limited shares or options for equivalent Unilife Corporation securities***

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## Class Ruling

# Income tax: scrip for scrip: exchange of Unilife Medical Solutions Limited shares or options for equivalent Unilife Corporation securities

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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, 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 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 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997;
- section 109-5 of the ITAA 1997;
- section 109-10 of the ITAA 1997;
- section 115-30 of the ITAA 1997;
- section 116-20 of the ITAA 1997;

- section 116-30 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

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

## **Class of entities**

3. The class of entities to which this Ruling applies are the holders of shares or options (Unilife securities) in respect of Unilife Medical Solutions Limited (Unilife) who:

- were residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* at the time the scheme was undertaken;
- acquired their Unilife securities on or after 20 September 1985;
- held their Unilife securities on capital account;
- were not employees of the Unilife group or were employees of the Unilife group who did not receive an option or right in Unilife Corporation that will be treated as a continuing interest for the purposes of Division 83A; and
- were not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions in Subdivision 124-M.

## **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 26 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

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7. This Ruling applies from 27 January 2010 to 30 June 2010. The Ruling continues to apply after 30 June 2010 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

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8. The following description of the scheme is based on information provided by the applicant.

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

9. Unilife is an Australian resident public company incorporated in Australia on 28 June 1985.

10. Unilife had ordinary shares listed on the Australian Securities Exchange (ASX) as well as unlisted options (consisting of options issued under an Employee Share Option Plan (ESOP options) and standalone options).

11. There were in excess of 8,500 holders of fully paid ordinary shares in Unilife. As at 27 January 2010, no shareholder had a direct interest of greater than 10% in Unilife.

12. As at 27 January 2010, there were 315,706,616 ordinary shares in Unilife, 17,860,000 ESOP options and 39,718,533 standalone options.

## Key events

13. On 1 September 2009, Unilife announced that it proposed to redomicile to the United States.
14. On 8 January 2010, all resolutions at the Court Ordered Scheme Meeting of Shareholders and Optionholders were passed.
15. On 14 January 2010, the Federal Court of Australia made relevant orders under section 411(4)(a) of the *Corporations Act 2001* to give effect to the proposed schemes (Unilife Schemes).
16. On 15 January 2010, the Federal Court of Australia orders that approved the Unilife Schemes were lodged with the Australian Securities and Investment Commission and Unilife ceased trading at close of trading on the ASX. The closing ASX price was \$1.05.
17. On 18 January 2010, Unilife Corporation was admitted to the official list of the ASX. CHESS Depository Interests (share-CDIs) in respect of the shares in Unilife Corporation commenced trading on the ASX on a deferred settlement basis on 18 January 2010.
18. The 'Record Date' for working out the consideration entitlements under the Unilife Schemes was 22 January 2010.
19. On 27 January 2010, the 'Implementation Date':
  - all shares in Unilife were transferred to Unilife Corporation pursuant to the order made by the Federal Court of Australia;
  - shareholders were issued one share-CDI for each share held in Unilife (representing a one sixth interest in one share of common stock in Unilife Corporation). Fractional entitlements were rounded down to a multiple of 6 share-CDIs; or
  - alternatively, if a shareholder elected, one share of common stock in Unilife Corporation was issued to each Unilife shareholder for every 6 shares in Unilife which they held as at the Record Date. Fractional entitlements were rounded down to the nearest whole number of common stock in Unilife Corporation.
20. Holders of ESOP options and standalone options had their options cancelled and received one option in Unilife Corporation for every 6 options held in Unilife at the Record Date.
21. The last day of deferred settlement trading was Monday, 1 February 2010.
22. Normal settlement trading in Unilife Corporation share-CDIs commenced on 2 February 2010.

**Foreign shareholders**

23. Subject to the exception in paragraph 24 of this Ruling, Unilife shareholders whose addresses were recorded in the respective registers as outside Australia, New Zealand, the United States, Hong Kong, United Kingdom, Ireland, France, Croatia and Malta (foreign shareholders) did not directly receive common stock or share-CDIs in Unilife Corporation.

24. Foreign shareholders may have received common stock or share-CDIs in Unilife Corporation if Unilife Corporation was satisfied before the Record Date that the relevant foreign shareholders could be lawfully issued such common stock or share-CDIs under the laws of their respective jurisdictions.

25. Where a foreign Unilife shareholder could not directly receive Unilife Corporation common stock or share-CDIs, the common stock or share-CDIs that they would have been entitled to receive were instead issued to a nominee company.

26. The nominee company sold the Unilife Corporation common stock and share-CDIs and distributed the relevant proceeds in respect of their entitlements to the foreign shareholders.

**Ruling**

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**Disposal of Unilife shares**

27. CGT event A1 happened when a shareholder disposed of a Unilife share to Unilife Corporation under the scheme described in this Ruling (subsection 104-10(1)).

28. The CGT event happened when all the shares in Unilife were transferred to Unilife Corporation on the Implementation Date (subsection 104-10(3)).

29. A shareholder made a capital gain from CGT event A1 happening if the capital proceeds for a Unilife share exceeded its cost base (subsection 104-10(4)).

30. A shareholder made a capital loss if the capital proceeds were less than the share's reduced cost base (subsection 104-10(4)).

31. Where a Unilife share was exchanged for a Unilife Corporation share-CDI, the capital proceeds for each Unilife share was the market value of the share-CDI (paragraph 116-20(1)(b)).

32. The 5-day volume weighted average price for a Unilife Corporation share-CDI for the period 28 January 2010 to 3 February 2010 was \$1.30. The Commissioner accepts \$1.30 as being the market value of the share-CDI on the Implementation Date.

33. Where a Unilife share was exchanged for an interest in a share of common stock in Unilife Corporation, the capital proceeds for each Unilife share was the market value of the part of the Unilife Corporation common stock that was received in exchange for the Unilife share (paragraph 116-20(1)(b)).

34. No publicly traded market existed for Unilife Corporation common stock on or around the Implementation Date. However, under the exchange ratio, six Unilife shares could be exchanged for one share of common stock in Unilife Corporation. The Commissioner accepts \$7.81 as being the market value of one share of common stock in Unilife Corporation on the Implementation Date. Accordingly, the capital proceeds for each Unilife share disposed of for a share of common stock in Unilife Corporation was \$1.30 (approximately one-sixth of \$7.81).

35. Where fractional entitlements to Unilife Corporation common stock or share-CDIs were rounded down, the capital proceeds for those Unilife shares for which nothing is received is the market value of those Unilife shares on the Implementation Date (subsection 116-30(1)). The Commissioner accepts that value to be \$1.30 per share.

## **Cancellation of Unilife options**

36. CGT event C2 happened when an option holder's option was cancelled under the scheme described in this Ruling (subsection 104-25(1)).

37. The time when CGT event C2 happened was when the ownership of the options ended on the Implementation Date (subsection 104-25(2)).

38. An option holder made a capital gain if the capital proceeds from the cancellation of the option were more than its cost base (subsection 104-25(3)).

39. An option holder made a capital loss if the capital proceeds were less than the option's reduced cost base (subsection 104-25(3)).

40. The capital proceeds for each Unilife option cancelled under the scheme was one-sixth of the market value of the Unilife Corporation option that was received in respect of the ending of the option (paragraph 116-20(1)(b)).

41. Where fractional entitlements to Unilife Corporation options were rounded down, the capital proceeds for those Unilife options for which nothing is received is the market value of the Unilife option on the Implementation Date (subsection 116-30(1)).

**Scrip for scrip roll-over**

42. A Unilife shareholder or option holder may choose scrip for scrip roll-over under Subdivision 124-M provided:
- (a) they made a capital gain from the relevant CGT event happening to their share or option; and
  - (b) any capital gain that they might make from the Unilife Corporation common stock, share-CDI or option received under the Share Scheme or Option Scheme would not be disregarded (except because of a roll-over).

**Cost base and reduced cost base of replacement assets**

43. Where a shareholder chooses scrip for scrip roll-over, the first element of the cost base and reduced cost base of each Unilife Corporation common stock is the sum of the cost bases of the Unilife shares reasonably attributable to the acquisition of the Unilife Corporation common stock (subsections 124-785(2) and 124-785(4)).
44. Where a shareholder chooses scrip for scrip roll-over, the first element of the cost base and reduced cost base of each Unilife Corporation share-CDI is the corresponding cost base of the Unilife share that was exchanged for the share-CDI (subsections 124-785(2) and 124-785(4)).
45. Where an option holder chooses scrip for scrip roll-over, the first element of the cost base and reduced cost base of each Unilife Corporation option is the sum of the cost bases of the Unilife options reasonably attributable to the acquisition of the Unilife Corporation option (subsections 124-785(2) and 124-785(4)).

**Acquisition date of replacement assets**

46. The acquisition date of the Unilife Corporation common stock, share-CDIs or options acquired in exchange for the Unilife shares and options is the date they were issued to each Unilife security holder (the Implementation Date) (sections 109-5 and 109-10).
47. However, for the purpose of determining eligibility to a discount capital gain, Unilife security holders who choose scrip for scrip roll-over are taken to have acquired their Unilife Corporation common stock, share-CDIs or options when they acquired the corresponding Unilife shares or options (item 2 in the table in subsection 115-30(1)).

## Appendix 1 – Explanation

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**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.*

48. 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.

49. The significant tax consequence is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables a share, option or right or similar interest holder to disregard a capital gain from a share, option, right or similar interest that is disposed of as part of a corporate takeover or merger if the holder receives a replacement asset in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement asset.

50. Subdivision 124-M contains a number of conditions that determine whether scrip for scrip roll-over is available under an arrangement. The main conditions and exceptions that are relevant to the circumstances of the restructure of Unilife are:

- (a) shares, options, rights or similar interests are exchanged for shares, options, rights or similar interests 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.

51. Under the Unilife Scheme the conditions for roll-over under Subdivision 124-M are satisfied.

## **Appendix 2 – Detailed contents list**

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

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## References

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- Previous draft:*
- ITAA 1997 104-10
- Not previously issued as a draft
- ITAA 1997 104-10(1)
  - ITAA 1997 104-10(3)
- Related Rulings/Determinations:*
- ITAA 1997 104-10(4)
  - ITAA 1997 104-25
  - ITAA 1997 104-25(1)
  - ITAA 1997 104-25(2)
  - ITAA 1997 104-25(3)
- TR 2006/10
- Subject references:*
- arrangement
  - CGT capital proceeds
  - CGT cost base
  - CGT discount
  - CGT events
  - CGT roll-over relief
  - disposal of shares
  - market value cost base
  - ordinary shares
  - schemes of arrangement
  - scrip for scrip roll-over
  - shareholders
- ITAA 1997 109-5
  - ITAA 1997 109-10
  - ITAA 1997 115-30
  - ITAA 1997 115-30(1)
  - ITAA 1997 116-20
  - ITAA 1997 116-20(1)(b)
  - ITAA 1997 116-30
  - ITAA 1997 116-30(1)
  - ITAA 1997 Subdiv 124-M
  - ITAA 1997 124-785(2)
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  - Corporations Act 2001 411(4)(a)
  - TAA 1953
  - Copyright Act 1968
- Legislative references:*
- ITAA 1936 6(1)
  - ITAA 1997
  - ITAA 1997 Div 83A
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### ATO references

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