


CR 2015/69 - Income tax: capital gains tax: scrip for scrip rollover - exchange of shares in Accenture SCA for shares in Accenture plc

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Class Ruling

Income tax: capital gains tax: scrip for scrip rollover – exchange of shares in Accenture SCA for shares in Accenture plc

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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 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:

- Subdivision 124-M of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 109-5 of the ITAA 1997
- section 110-25 of the ITAA 1997
- section 110-55 of the ITAA 1997, and
- Subdivision 115-A 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 individual shareholders of Accenture SCA who:

- acquired their Class I common shares in Accenture SCA (SCA shares) after 20 September 1985
- held their SCA shares on capital account
- participated in the scheme as described in paragraphs 8 to 29 of this Ruling
- exchanged their SCA shares for Class A ordinary shares in Accenture plc on a one-for-one basis (the Exchange)
- were resident of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* at the time the Exchange was undertaken, and
- were not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on SCA Shares.

(**Note:** Division 230 will generally not apply to individuals, unless they make an election for it to apply to them.)

In this Ruling, an entity belonging to this class of entities is referred to as a Participating Australian Shareholder.

Qualifications

4. The Commissioner makes his ruling 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 8 to 29 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.

Date of effect

7. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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. The following documents, or relevant parts of them form part of and are to be read with the description:

- Application for a Class Ruling dated 25 March 2015
- Accenture SCA Share Exchange Offer
- Relevant articles from Accenture SCA Articles of Association
- Correspondence received from 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. Accenture Public Limited Company (Accenture plc) is a company incorporated and resident for tax purposes in Ireland.

10. Accenture plc is the ultimate holding company of the Accenture Group.

11. The Accenture Group provides management consultancy, technology, and outsourcing services to various industries worldwide.

12. Accenture SCA, a subsidiary of Accenture plc, indirectly holds all the shares in the operating entities through which the Accenture Group conducts its business.

13. Accenture SCA was incorporated in 2000 and is a resident of Luxembourg for tax purposes.

14. Prior to the Exchange, Accenture SCA had the following classes of shares issued:

- SCA Shares
- Treasury Shares.

15. The SCA Shares entitle the holder the right to vote and economic rights.

16. SCA Shares are not traded on a public stock exchange. The Accenture SCA Articles of Association specify the terms and conditions by which the holders of SCA Shares have opportunities to redeem or transfer their shares.

17. Treasury Shares are SCA Shares that were previously repurchased by Accenture SCA or acquired by its wholly owned subsidiary but not cancelled and instead held in treasury. All voting and economic rights attached to these Treasury Shares are suspended indefinitely in accordance with the *Luxembourg Company Act*. The shares cease to be classified as Treasury Shares only upon the sale or transfer of those shares to a third party (which includes Accenture plc).

18. Prior to the Exchange:

- Accenture plc held approximately 95% of SCA Shares
- Various individual shareholders including Participating Australian Shareholders (the minority shareholders) held in aggregate approximately 5% of SCA Shares.

19. The minority shareholders also held one Class X Share in Accenture plc for each SCA Share held in Accenture SCA.

20. The Accenture plc Class X Share is a voting share only and has no economic rights. The Class X Shares are non-transferrable and redeemable at the option of Accenture plc for a redemption price equal to the nominal par value of each Class X Share or US\$0.0000225 per share.

The Exchange

21. On 5 May 2015, Accenture plc made an offer to all holders of SCA Shares to exchange their SCA Shares for Class A ordinary shares in Accenture plc on a one-for-one basis (the Exchange).

22. The Exchange offer opened on 29 June 2015 and closed on 14 August 2015 (Exchange trading window).

23. The Accenture SCA Share Exchange Offer outlined the terms and conditions of the Exchange.

24. The Exchange was implemented:

- Accenture SCA shareholders notified Accenture plc their acceptance of the Exchange offer.
- During the Exchange trading window Accenture plc processed the Exchange requests.
- Accenture plc issued Class A ordinary shares to participating Accenture SCA shareholders in exchange for the SCA Shares on a one-for-one basis.

25. Accenture SCA shareholders transferred their SCA Shares and received Class A ordinary shares in Accenture plc within 7 days of the date the Accenture SCA shareholder accepted the Exchange offer (Exchange Date).

26. Under the Exchange, Accenture plc also redeemed the Class X Shares that the participating Accenture SCA shareholder held in relation to the exchanged SCA Shares for nil or nominal cash consideration.

27. According to the Accenture SCA Share Exchange Offer, the holders of SCA Shares who did not participate in the Exchange had the opportunity to sell or redeem their shares for cash in accordance with the Accenture SCA Articles of Association. Accenture SCA shareholders who did not wish to participate could continue to hold their SCA Shares.

28. Just before the Exchange commenced, both Accenture SCA and Accenture plc had more than 300 members.

29. Class A ordinary shares in Accenture plc are listed and publicly traded on the New York Stock Exchange (NYSE).

Ruling

No Subdivision 124-M scrip for scrip roll-over if a capital loss is made

30. A Participating Australian Shareholder who makes a capital loss from the Exchange cannot choose scrip for scrip roll-over under Subdivision 124-M (subsection 124-780(3)).

Subdivision 124-M scrip for scrip roll-over available if a capital gain is made

31. Subject to the qualification in the following paragraph of this Ruling, the Participating Australian Shareholder who makes a capital gain from the Exchange can choose scrip for scrip roll-over under Subdivision 124-M (section 124-780).

32. Scrip for scrip roll-over cannot be chosen if any capital gain a Participating Australian Shareholder makes from the replacement SCA Share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a))

If scrip for scrip roll-over is chosen

33. If the Participating Australian Shareholder chooses scrip for scrip roll-over, any capital gain made from the Exchange is disregarded (subsection 124-785(1)).

If scrip for scrip roll-over is not, or cannot be, chosen

34. If the Participating Australian Shareholder does not or could not choose scrip for scrip roll-over, the capital gain made from the Exchange is not disregarded.

Discount capital gain

35. A Participating Australian Shareholder who made a capital gain from the Exchange and scrip for scrip roll-over is not or could not be chosen, may be eligible to treat the capital gain as a 'discount capital gain' provided they acquired the shares at least 12 months before the Exchange Date and the other requirements in Subdivision 115-A are satisfied.

Cost base and reduced cost base of Class A ordinary shares

If scrip for scrip roll-over is chosen

36. Where scrip for scrip roll-over is chosen, the first element of the cost base/reduced cost base of each Class A ordinary share received as a result of the Exchange is worked out by reasonably attributing to it the cost base of the SCA Share for which it was exchanged and for which the Participating Australian Shareholder obtained the roll-over (subsections 124-785(2) and 124-785(4)).

If scrip for scrip roll-over is not, or cannot be, chosen

37. Where scrip for scrip roll-over is not or cannot be chosen, the first element of the cost base and reduced cost base of each Class A ordinary share received is equal to the market value of the SCA Share exchanged for the relevant Class A ordinary share, worked out as at the Exchange Date (subsections 110-25(2) and 110-55(2)).

Acquisition date of Class A ordinary shares

38. A Participating Australian Shareholder acquired the Class A ordinary shares on the date those shares were issued to the Participating Australian Shareholder (that is, the Exchange Date)(section 109-5).

39. However, for the purposes of determining eligibility to a discount capital gain, the acquisition date of Class A ordinary shares in Accenture plc received by a Participating Australian Shareholder who chooses scrip for scrip roll-over, is taken to be the acquisition date of the corresponding SCA Shares that were disposed of under the Exchange (item 2 in the table of 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.*

40. 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.

41. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables the holder of a share in a company to disregard a capital gain from a share that is disposed of if the holder receives a replacement share in another company in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

Subdivision 124-M

42. 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 exchange of SCA Shares for Class A ordinary shares in Accenture plc are:

- shares in a company are exchanged for shares in another company (replacement of shares)
- the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or 124-780(2A) (conditions for arrangement)
- the conditions for the roll-over in subsection 124-780(3) are satisfied (conditions for roll-over)
- if subsection 124-780(4) applies, the further conditions in subsection 124-780(5) are satisfied, and
- the exceptions to obtaining scrip for scrip roll-over in section 124-795 are not applicable.

Replacement of shares

43. In this case, a Participating Australian Shareholder received a share in Accenture plc for each SCA Share it transferred under the Exchange (paragraph 124-780(1)(a)).

Conditions for arrangement are satisfied

44. Paragraph 124-780(1)(b) requires that shares in an entity be exchanged in consequence of a single arrangement that satisfies subsections 124-780(2) or 124-780(2A). Subsection 124-780(2A) does not apply to the scheme described in this Ruling.

45. The Exchange is considered a single arrangement for the purposes of Subdivision 124-M and satisfies the conditions in subsection 124-780(2) as:

- the arrangement results in another company (the acquiring entity, that is, Accenture plc) becoming the owner of more than 80% of the voting shares in Accenture SCA
- all shareholders (apart from the acquiring entity, Accenture plc) of voting shares in Accenture SCA could participate, and
- participation was available on substantially the same terms for all shareholders of SCA shares.

Conditions for roll-over are satisfied

46. Paragraph 124-780(1)(c) requires that the conditions for roll-over in subsection 124-780(3) are satisfied. These conditions must be met for each SCA Share for which scrip for scrip roll-over is chosen.

47. In this case, the conditions in subsection 124-780(3) are satisfied:

- a Participating Australian Shareholder acquired their SCA Shares on or after 20 September 1985
- apart from the roll-over, a Participating Australian Shareholder would make a capital gain from a CGT event happening to the SCA Shares
- the replacement share is a Class A ordinary share in Accenture plc, and
- the Participating Australian Shareholder chooses to obtain the roll-over under Subdivision 124-M.

Further conditions not applicable

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

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

49. Paragraph 124-780(4)(a) does not apply because both Accenture SCA and Accenture plc had at least 300 members just before the Exchange started. Paragraph 124-780(4)(b) does not apply because a Participating Australian Shareholder, Accenture SCA and Accenture plc are not members of the same linked group just before the Exchange started.

Exceptions to obtaining scrip for scrip roll-over not applicable

50. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen.

51. Scrip for scrip roll-over under Subdivision 124-M cannot be chosen if:

- just before the Exchange, the holder of the share is a foreign resident, unless the replacement interest is taxable Australian property just after the replacement interest is acquired
- the holder of the share and the acquiring entity are members of the same wholly-owned group and the acquiring entity is a foreign resident
- roll-over can be chosen under Division 122 (which deals with the disposal of assets to a wholly-owned company) or Division 615 (which deals with roll-overs for business restructure) for the CGT event happening in relation to the Exchange, and
- the replacement entity made a choice to the effect that the holder could not obtain Subdivision 124-M scrip for scrip roll-over in relation to the Exchange.

52. The circumstances of the Exchange are such that none of the exceptions listed in the paragraph above apply (the exception in paragraph 124-795(2)(a) is discussed in paragraph 32 of this Ruling).

Appendix 2 – Detailed contents list

53. 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
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 109-5
 - 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 Div 122
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(1)
 - ITAA 1997 124-780(1)(a)
 - ITAA 1997 124-780(1)(b)
 - ITAA 1997 124-780(1)(c)
 - ITAA 1997 124-780(2)
 - ITAA 1997 124-780(2A)
 - ITAA 1997 124-780(3)
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-780(4)(a)
 - ITAA 1997 124-780(4)(b)
 - ITAA 1997 124-780(5)
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 Div 230
 - ITAA 1997 Div 615
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ATO references

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