


CR 2015/73 - Income tax: scrip for scrip roll-over: restructure of Campaign Monitor Holdings Pty Limited

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Class Ruling

Income tax: scrip for scrip roll-over: restructure of Campaign Monitor Holdings Pty Limited

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❶ 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 Rulings are:

- section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 102-10 of the ITAA 1997
- subsection 104-10(1) of the ITAA 1997
- paragraph 104-10(3)(b) of the ITAA 1997
- subsection 104-10(4) of the ITAA 1997
- section 109-10 of the ITAA 1997
- subsection 110-25(2) of the ITAA 1997
- subsection 110-55(2) of the ITAA 1997
- subsection 116-20(1) of the ITAA 1997
- Subdivision 124-M of the ITAA 1997

- section 124-780 of the ITAA 1997
- subsection 124-780(2) of the ITAA 1997
- subsection 124-780(2A) of the ITAA 1997
- subsection 124-780(3) of the ITAA 1997
- paragraph 124-780(3)(e) of the ITAA 1997
- subsection 124-780(5) of the ITAA 1997
- section 124-782 of the ITAA 1997
- section 124-783 of the ITAA 1997
- section 124-785 of the ITAA 1997
- subsection 124-785(1) of the ITAA 1997
- subsection 124-785(2) of the ITAA 1997
- subsection 124-785(4) of the ITAA 1997, and
- Division 974 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is the holders of shares in Campaign Monitor Holdings Pty Ltd (Campaign Monitor) who:

- (a) are 'residents of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- (b) acquired their shares in Campaign Monitor on or after 20 September 1985
- (c) participate in the exchange of their Campaign Monitor shares for shares in Campaign Monitor Holdings (UK) Limited under the scheme that is the subject of this Ruling
- (d) hold their shares in Campaign Monitor on capital account for tax purposes, and
- (e) are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their shares.

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

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 8 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.

Date of effect

7. This Ruling applies from 1 July 2014 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:

- Class Ruling application dated 18 March 2015
- Implementation Deed effected on 31 March 2015
- Correspondence received in relation to the Class Ruling application dated 8 July 2015

Campaign Monitor Holdings Pty Limited

9. Campaign Monitor Holdings Pty Limited (**Campaign Monitor**) was the head company of the tax consolidated group in Australia, with four subsidiary members.

10. Campaign Monitor and its related companies (**CM Group**) as described in the Implementation Deed, design and provide software products and support services to assist companies, designers and agencies create and manage email marketing.

Restructure

11. To facilitate global expansion and allow for greater flexibility to raise foreign capital, it was decided to introduce a new ultimate holding company, established in the United Kingdom.

12. The new ultimate holding company, Campaign Monitor Holdings (UK) Limited (**UK Holdco**), was interposed under a corporate restructure (**Restructure**).

13. As part of the Restructure, the head company of another consolidated group, Campaign Monitor Australia No. 1 Pty Ltd (**New AusCo. 1**), acquires shares in Campaign Monitor via its subsidiary Campaign Monitor Australia No. 2 Pty Ltd (**New AusCo. 2**). New AusCo.1 is an indirect wholly owned subsidiary of UK Holdco.

14. The Restructure involves the following:

- interposing UK Holdco as the new ultimate holding company
- Campaign Monitor shareholders exchange each of their Campaign Monitor shares on a one-for-one basis for shares in UK Holdco.

15. The market value of the shares that shareholders receive in UK Holdco are substantially the same as the market value of the shares that they held in Campaign Monitor. The shares in UK Holdco also carry the same kind of rights and obligations as those attached to the shares in Campaign Monitor.

16. New AusCo. 2 is the acquiring entity of the Campaign Monitor shares.

17. The steps involved in the arrangement are outlined in clause 3 of the Implementation Deed. The steps are as follow:

- Prior to the Implementation Date, Campaign Monitor must notify its shareholders and option holders that New AusCo. 2 has made an offer to acquire all the issued Campaign Monitor shares and options on terms consistent with the Implementation Deed.
- Particularly, with effect from the Implementation Date:
 - New AusCo. 2 must acquire all of the shares in Campaign Monitor from the shareholders as set out in clause 3.3(a)
 - New AusCo. 2 must procure the issue of equivalent shares in UK Holdco in consideration for the share transfer, and
 - The new shareholders of UK Holdco enter into the Shareholders' Deed.
- As a result of the issue of equivalent shares, New AusCo. 2 will owe UK Holdco an amount equal to the market value consideration. To address this loan, the Subsequent Transaction Steps as described in the Implementation Deed took place immediately afterwards.

18. The scheme outlined in the Implementation Deed was effected on 31 March 2015.

Other

19. Following the implementation of the Restructure, UK Holdco has the same owners of its equity as Campaign Monitor had formerly, and each of the previous shareholders and option holders of Campaign Monitor has the same economic interest in UK Holdco as they had in Campaign Monitor as well.

20. There was no transfer of Australian assets, including intellectual property as a result of the Restructure.

21. No third party investors are acquiring equity in Campaign Monitor as part of the Restructure.

22. Campaign Monitor shareholders are common stakeholders for the purposes of section 124-783.

Ruling

CGT event A1 – disposal of Campaign Monitor shares to New AusCo. 2

23. CGT Event A1 happens when a Campaign Monitor shareholder disposes of their Campaign Monitor shares to New AusCo. 2 (subsection 104-10(1)).

24. The time of CGT event A1 is when the change of ownership occurred on 31 March 2015 (paragraph 104-10(3))(b)).

25. A Campaign Monitor shareholder makes a capital gain from CGT event A1 happening if the capital proceeds from the disposal of the Campaign Monitor share exceed its cost base. A Campaign Monitor shareholder makes a capital loss if the capital proceeds from the disposal of the share are less than its reduced cost base (subsection 104-10(4)).

26. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening to a Campaign Monitor share is the market value of the property (shares in UK Holdco) received or entitled to receive in respect of the disposal of that share. The market value of UK Holdco shares is worked out as at the time CGT event A1 happens.

Availability of scrip for scrip rollover

27. A Campaign Monitor Australian resident shareholder who makes a capital gain from their shares will be eligible to choose scrip for scrip rollover under Subdivision 124-M (sections 124-780 and 124-785).

Consequences of choosing Subdivision 124-M roll-over

28. If scrip for scrip rollover is chosen, the capital gain made from the transfer of the shares to New AusCo. 2 is disregarded under subsection 124-785(1).

29. Because all Campaign Monitor shareholders are common stakeholders, if rollover is chosen, section 124-782 will apply.

30. Where section 124-782 applies to a Campaign Monitor shareholder, that shareholder and New AusCo. 2 must jointly choose to obtain the roll-over. Furthermore, that shareholder must inform New AusCo. 2 in writing of the cost base of their Campaign Monitor shares worked out just before the disposal of those shares to New AusCo. 2 (paragraph 124-780(3)(e)).

31. As the shares are exchanged on a one for one basis, the first element of the cost base and reduced cost base of each UK Holdco share acquired by a shareholder under the Restructure is worked out by reasonably attributing to it the cost base (or the part of it) of their share in Campaign Monitor for which it was exchanged and for which they obtained the rollover (subsections 124-785(2) and 124-785(4)).

Consequences if Subdivision 124-M roll-over is not chosen, or cannot be chosen

32. A shareholder who does not choose Subdivision 124-M roll-over, or cannot choose the roll-over, must take into account any capital gain or capital loss from the disposal of their shares in Campaign Monitor in working out their net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

33. For these shareholders, the first element of the cost base and reduced cost base of each UK Holdco share is equal to the market value of the shares in Campaign Monitor that they disposed of, worked out as at the time of the acquisition of the UK Hold Co shares, divided by the number of shares they are issued in UK Holdco (subsections 110-25(2) and 110-55(2)).

34. The UK Holdco shares, which are an equity interest under Division 974, are acquired by a shareholder when the shares are issued or allotted (Item 2 of the table in section 109-10).

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.*

35. Scrip for scrip rollover under Subdivision 124-M allows a shareholder to disregard a capital gain made from a share that is disposed of as part of an arrangement, 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.

36. 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 Campaign Monitor are:

- (a) Shares are exchanged for shares in another company
- (b) The exchange is in consequence of a single arrangement that satisfies subsection 124-780(2) or (2A)
- (c) The conditions for roll-over in subsection 124-780(3) are satisfied
- (d) Further conditions for non-arm's length transactions are satisfied, and
- (e) Exceptions to obtaining scrip for scrip roll-over are not applicable.

37. The scheme satisfies these requirements for the roll-over under Subdivision 124-M.

38. Particularly, where the parties are not dealing at arm's length, as in this case, the additional conditions in subsection 124-780(5) are also satisfied. The market value of the shares that shareholders received in UK Holdco are substantially the same as the market value of the shares that they held in Campaign Monitor. The shares in UK Holdco also carry the same kind of rights and obligations as those attached to the shares in Campaign Monitor.

Appendix 2 – Detailed contents list

39. 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:

- arrangement
- capital gains tax
- CGT roll-over relief
- common stakeholders
- scrip for scrip roll-over

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(b)

- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(3)
- ITAA 1997 124-780(2)
- ITAA 1997 124-780(2A)
- ITAA 1997 124-780(3)(e)
- ITAA 1997 124-780(5)
- ITAA 1997 124-782
- ITAA 1997 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 Div 230
- ITAA 1997 Div 974

ATO references

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