

CR 2018/14 - Income tax: scrip for scrip scheme of arrangement: CFC Global Pty Ltd

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Class Ruling

Income tax: scrip for scrip scheme of arrangement: CFC Global Pty Ltd

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ⓘ 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.

Summary – 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 provisions

2. The relevant provisions dealt with in this Ruling are:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 102-10 of the ITAA 1997
 - section 104-10 of the ITAA 1997
 - section 110-25 of the ITAA 1997
 - section 110-55 of the ITAA 1997
 - section 112-30 of the ITAA 1997
 - section 116-20 of the ITAA 1997
 - Subdivision 115-A of the ITAA 1997

- Subdivision 124-M of the ITAA 1997
- section 124-780 of the ITAA 1997
- section 124-783 of the ITAA 1997
- section 124-790 of the ITAA 1997
- section 124-795 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies is those entities who:

- at the Completion Date will be the ordinary shareholders in CFC Global Pty Ltd
- participated in the scheme that is the subject of this Ruling
- are residents of Australia as defined in subsection 6(1) of the ITAA 1936
- are not a 'temporary resident' of Australia as defined in section 995-1 of the ITAA 1997
- acquired their CFC shares on or after 20 September 1985
- held their shares on capital account and did not hold their shares in CFC as revenue assets (as defined in section 977-50 of the ITAA 1997) or trading stock (as defined in subsection 995-1(1) of the ITAA 1997)
- made a capital gain as a result of the scheme that is the subject of this Ruling, and
- are not subject to the Taxation of Financial Arrangements (TOFA) under Division 230 of the ITAA 1997.

(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 scheme precisely 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 2017 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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 29 November 2017
- Share Sale Agreement, dated 31 January 2018
- CFC Global Steps Plan, dated 30 January 2018, and
- correspondence between the applicant's adviser and the Australian Taxation Office.

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

Relevant entities

CFC Global Pty Ltd (CFC)

9. CFC is an Australian resident private company which operates in the fertility services industry.

10. CFC is the head company of a tax consolidated group.

11. CFC has only fully paid ordinary shares on issue with each share carrying the same rights to vote, receive dividends and receive capital distributions.

CHA SMG Australia Corporate Pty Ltd (CHA SMG Corporate)

12. CHA SMG Corporate is a newly incorporated special purpose vehicle established solely for the purpose of the acquisition of CFC.

CHA SMG Australia Holding Pty Ltd (CHA SMG Holding)

13. CHA SMG Holding is a newly incorporated special purpose vehicle established solely for the purpose of the acquisition of CFC.

The scheme

14. On 31 January 2018, a Share Sale Agreement was entered into between those entities that will hold all of the CFC shares (the Participating Shareholders) at the time of completion (the Completion Date), CHA SMG Corporate, CHA SMG Holding and other guarantor entities.

15. Under the Share Sale Agreement, and subject to certain conditions being satisfied, the Participating Shareholders agreed to sell all their CFC shares to CHA SMG Corporate and CHA SMG Corporate agreed to buy all the CFC shares.

16. Prior to entering into the Share Sale Agreement, a restructure of the shareholding in CFC was undertaken.

17. As part of that restructure:

- an entity was interposed between the unitholders of a related unit trust (Original Unitholders) and that unit trust
- the Original Unitholders exchanged their units in the unit trust for shares in the interposed entity, and
- the Original Unitholders entered into an agreement with CFC whereby they will exchange their shares in the interposed entity for shares in CFC upon CFC entering into a share sale agreement with a buyer.

Scheme consideration

18. The Participating Shareholders who hold ordinary shares at the Completion Date can choose to receive in exchange for their CFC shares consideration of:

- CHA SMG Holding shares only, or
- a mixture of CHA SMG Holding shares and cash.

Other matters

19. The requirements around all Participating Shareholders being able to participate in the scheme and participate on substantially the same terms is satisfied (paragraphs 124-780(2)(b) and 124-780(2)(c) of the ITAA 1997).

20. The Participating Shareholders and CHA SMG Corporate dealt with each other at arm's length (subsection 124-780(4) of the ITAA 1997).

21. No Participating Shareholder was a 'significant stakeholder' or a 'common stakeholder' (section 124-783 of the ITAA 1997).

22. No member of the wholly-owned group of which CHA SMG Corporate is a member will issue equity (other than a replacement interest), or owes new debt, under the arrangement that is the subject of this Ruling, to an entity that is not a member of the wholly-owned group in relation to the issuing of the CHA SMG Holding shares (paragraph 124-780(3)(f) of the ITAA 1997).

Ruling

CGT event A1

23. CGT event A1 happens to a Participating Shareholder that disposes of their CFC shares to CHA SMG Australia Corporate pursuant to the scheme (section 104-10 of the ITAA 1997).

24. The timing of the event is the Completion Date (paragraph 104-10(3)(b) of the ITAA 1997).

Capital gain or loss

25. A Participating Shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a CFC share exceed the cost base of that share. The capital gain is the amount of the excess (subsection 104-10(4) of the ITAA 1997).

26. A Participating Shareholder will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a CFC share were less than the reduced cost base of that share. The capital loss is the amount of the difference (subsection 104-10(4) of the ITAA 1997).

27. The capital proceeds from CGT event A1 happening to a CFC share are the total of the money received or entitled to be received, and the market value (in Australian Dollars) of any new CHA SMG Australia Holding shares received or entitled to be received, in respect of the disposal of that CFC share.

28. The market value of any new CHA SMG Australia Holding shares is worked out as at the time of CGT event A1, being the Completion Date (subsection 116-20(1) of the ITAA 1997).

Availability of scrip for scrip roll-over

29. Subject to the qualification in the following paragraph, a Participating Shareholder who makes a capital gain from the disposal of their CFC shares to CHA SMG Corporate in exchange for CHA SMG Holding shares is eligible to choose scrip for scrip roll-over under Subdivision 124-M (sections 124-780 and 124-790 of the ITAA 1997).

30. Scrip for scrip roll-over cannot be obtained if any capital gain a Participating Shareholder might make from the replacement CHA SMG Holding interest would be disregarded, except because of a roll-over (paragraph 124-795(2)(a) of the ITAA 1997).

Consequences of choosing scrip for scrip roll-over

31. If a Participating Shareholder chooses scrip for scrip roll-over, that part of the capital gain that is referable to the receipt of CHA SMG Holding shares is disregarded (subsections 124-785(1) and 124-790(1) of the ITAA 1997).

32. Where a Participating Shareholder's capital proceeds include a cash consideration component, that component is an ineligible part for which no roll-over is available (subsection 124-790(1) of the ITAA 1997).

33. The first element of the cost base and reduced cost base of a replacement CHA SMG Holding share is worked out by reasonably attributing to it the cost base and reduced cost base of the CFC share for which it was exchanged and roll-over obtained (subsections 124-785(2) and 124-785(4) of the ITAA 1997).

34. The cost base and reduced cost base of the CFC share is reduced by so much of that cost base that is attributable to the cash component, being the ineligible part (subsection 124-785(3) of the ITAA 1997).

35. For the purpose of determining eligibility to make a discount capital gain on any later disposal of CHA SMG Holding shares, a Participating Shareholder who chooses Subdivision 124-M of the ITAA 1997 roll-over will be taken to have acquired their CHA SMG Holding shares on the date they acquired the corresponding CFC shares (Item 2 of the table in subsection 115-30(1) of the ITAA 1997).

Consequences if scrip for scrip roll-over is not available

36. Scrip for scrip roll-over will not be available to the Original Unitholders where the Commissioner concludes that Part IVA of the ITAA 1936 applies to the internal restructure detailed at paragraph 17 of this Ruling.

37. In such a case, the Original Unitholders must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their CFC shares in working out their net capital gain or net capital loss for the income year in which the event occurs (sections 102-5 and 102-10 of the ITAA 1997).

38. The first element of the cost base and reduced cost base of a replacement CHA SMG Holding share is the market value of the part of each CFC share given to acquire the CHA SMG Australia Holding share (subsections 110-25(2) and 110-55(3) of the ITAA 1997).

39. Where an Original Unitholder receives cash consideration in addition to CHA SMG Holding shares, the cash consideration is not included in the cost base or reduced cost base (subsection 112-30(1) of the ITAA 1997).

40. The CHA SMG Holding shares will be acquired by each Original Unitholder when they are issued or allotted (Item 2 of the table in section 109-10 of the ITAA 1997).

41. An Original Unitholder who makes a capital gain on the disposal of a share in an acquiring company but does not choose roll-over can treat the capital gain as a 'discount capital gain' provided the conditions of Subdivision 115-A are met. In particular, the CHA SMG Holding share must have been acquired by the Original Unitholder at least 12 months before the time of CGT event A1 happening to the share (section 115-25 of the ITAA 1997).

Commissioner of Taxation

4 April 2018

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 that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997.

Scrip for scrip roll-over

44. Scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 enables a shareholder to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base of the replacement share.

45. Subdivision 124-M of the ITAA 1997 contains a number of conditions for, and exceptions to, a shareholder being able to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- an entity exchanges shares in a company for shares in another company (paragraph 124-780(1)(a) of the ITAA 1997)
- the exchange is in consequence of a single arrangement that satisfies subsection 124-780(2) or (2A) of the ITAA 1997
- conditions for the roll-over in subsection 124-780(3) of the ITAA 1997 are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

46. The scheme the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M of the ITAA 1997.

47. Roll-over under Subdivision 124-M of the ITAA 1997 will not be available to the Original Unitholders where the Commissioner concludes that Part IVA of the ITAA 1936 applies to the internal restructure detailed at paragraph 17 of this Ruling.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1936 Pt IVA
 - ITAA 1997
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
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 - ITAA 1997 110-25(2)
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 - ITAA 1997 112-30
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 - ITAA 1997 115-25
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ATO references

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