


CR 2018/17 - Income tax: partial scrip for scrip roll-over: acquisition of GPS IP Group Holdings Ltd by Easton Wealth Limited

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Class Ruling

Income tax: partial scrip for scrip roll-over: acquisition of GPS IP Group Holdings Ltd by Easton Wealth Limited

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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.

Summary – 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 provisions

2. The relevant provisions dealt with in this Ruling are:

- subsection 104-10(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)
- subsection 104-10(2) of the ITAA 1997
- subsection 104-10(3) of the ITAA 1997
- paragraph 104-10(3)(a) 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 112-30(1) of the ITAA 1997
- Subdivision 115-A of the ITAA 1997
- subsection 115-25(1) of the ITAA 1997
- subsection 115-30(1) of the ITAA 1997
- subsection 116-20(1) of the ITAA 1997
- paragraph 116-20(1)(a) of the ITAA 1997
- paragraph 116-20(1)(b) of the ITAA 1997
- Subdivision 124-M of the ITAA 1997
- section 124-780 of the ITAA 1997
- subsection 124-785(1) of the ITAA 1997
- subsection 124-785(2) of the ITAA 1997
- subsection 124-785(3) of the ITAA 1997
- subsection 124-785(4) of the ITAA 1997
- section 124-790 of the ITAA 1997
- subsection 124-790(1) of the ITAA 1997
- subsection 124-790(2) of the ITAA 1997
- paragraph 124-795(2)(a) of the ITAA 1997.

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 is the shareholders of GPS IP Group Holdings Ltd (GPS) who:

- participated in the arrangement under which Easton Wealth Australia Pty Limited (Easton Wealth) acquired 100% of the shares in GPS
- were residents of Australia (within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*)
- held their shares in GPS on capital account, that is, the shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
- are not 'significant stakeholders' or 'common stakeholders' as defined in section 124-783 in relation to the arrangement, and

- were not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their GPS shares.
(Note: Division 230 will generally not apply to individuals, unless they have made an election for the Division 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 16 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 2016 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:

- the application for a class ruling dated 26 October 2017
- the Share Sale and Purchase Deed (GPS Wealth), together with all schedules and annexures, dated 26 June 2017 (Sale Deed), and

- the Warranty and Indemnity Deed (GPS Wealth), together with all schedules and annexures, dated 26 June 2017.

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

GPS IP Group Holdings Ltd (GPS)

9. GPS is an unlisted public company that operates a business providing financial services. GPS was incorporated on 20 August 2013.

Easton Investments Limited (Easton Investments)

10. Easton Investments is a public company that is listed on the Australian Securities Exchange (ASX). Easton Investments operates a business involving accounting and wealth services.

Easton Wealth Australia Pty Limited (Easton Wealth)

11. Easton Wealth is a wholly owned subsidiary of Easton Investments.

Acquisition of GPS by Easton Investments

12. On 26 June 2017 Easton Wealth entered into the Sale Deed with the shareholders identified in Schedule 1 of the Sale Deed (Majority Shareholders). A condition of the Sale Deed was that offers would be made by Easton Wealth to the remaining shareholders to purchase their shares on the same terms as those offered to the Majority Shareholders.

13. On 4 July 2017 Easton Wealth made individual offers to the remaining shareholders of GPS (Minority Shareholders) in the form of a Share Purchase Agreement to purchase their shares on the same terms as those offered to the Majority Shareholders.

14. On 11 August 2017 each Majority Shareholder transferred each share they held in GPS to Easton Wealth in exchange for 0.20 of a share in Easton Investments and cash consideration of \$0.312.

15. On 7 September 2017 each Minority Shareholder transferred each share they held in GPS to Easton Wealth in exchange for 0.20 of a share in Easton Investments and cash consideration of \$0.312.

No choice to deny partial roll-over under Subdivision 124-M

16. Easton Investments did not make a choice to deny shareholders of GPS partial roll-over under Subdivision 124-M (subsection 124-795(4)).

Ruling

Capital Gains Tax (CGT) consequences***CGT event A1***

17. CGT event A1 happened to each GPS shareholder when they disposed of each share in GPS to Easton Wealth (subsections 104-10(1) and 104-10(2)).

18. The time of CGT event A1 for a Majority Shareholder is the date that they entered into the Sale Deed, being 26 June 2017 (paragraph 104-10(3)(a)).

19. The time of CGT event A1 for a Minority Shareholder is the date that they entered into the Share Purchase Agreement (paragraph 104-10(3)(a)).

Capital proceeds

20. The capital proceeds for CGT event A1 happening to a GPS shareholder is the money and market value of any property received or entitled to be received in respect of the event happening (paragraphs 116-20(1)(a) and 116-20(1)(b)).

21. The capital proceeds received by a GPS shareholder for each share they held in GPS was 0.20 of a share in Easton Investments and cash consideration of \$0.312.

Capital gain or loss

22. A GPS shareholder will make a capital gain if the capital proceeds from the disposal of a GPS share are more than its cost base (subsection 104-10(4)). The capital gain is the amount of the excess.

23. A GPS shareholder will make a capital loss if the capital proceeds are less than the reduced cost base of the GPS share (subsection 104-10(4)). The capital loss is the amount of the difference.

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

24. Subject to the qualification in paragraph 26 of this Ruling, a GPS shareholder who made a capital gain from the disposal of a GPS share may choose partial scrip for scrip roll-over (sections 124-780 and 124-790).

25. If a GPS shareholder chooses to obtain partial scrip for scrip roll-over, that part of the capital gain referable to the receipt of a Easton Investments share is disregarded (subsections 124-785(1) and 124-790(1)).

26. Scrip for scrip roll-over cannot be chosen if any capital gain the GPS shareholder makes from the replacement Easton Investments share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)). For example, where the replacement Easton Investments shares are held as trading stock.

Cost base of Easton Investments share

27. The cost base and reduced cost base of an Easton Investments share acquired by a GPS shareholder in exchange for their GPS shares, is affected by whether the shareholder chooses scrip for scrip roll-over.

Scrip for scrip roll-over is not chosen

28. Where scrip for scrip roll-over is not chosen, the first element of the cost base and reduced cost base of each new Easton Investments share is equal to the market value of the GPS shares given in exchange for the acquisition of the Easton Investments share (subsections 110-25(2), 110-55(2) and 112-30(1)). The market value is worked out as at the time of the acquisition (subsection 110-25(2)). The market value of the GPS shares given by the shareholder for the receipt of the cash consideration is not included in the cost base or reduced cost base of new Easton Investments shares (subsection 112-30(1)).

Scrip for scrip roll-over is chosen

29. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of a replacement Easton Investments share is worked out by reasonably attributing to it the parts of the cost base of the GPS shares for which it was exchanged and for which roll-over was obtained (subsection 124-785(2) and 124-785(4)). Any parts of the cost base of the GPS shares exchanged by the shareholder that relates to the receipt of cash consideration is not included (subsection 124-785(3)).

Acquisition date of Easton Investments share

30. The acquisition date of an Easton Investments share acquired by a GPS shareholder in exchange for all of their GPS shares, is affected by whether the shareholder chooses scrip for scrip roll-over.

Scrip for scrip roll-over is not chosen

31. The acquisition date of an Easton Investments share acquired by a Majority Shareholder is the date that they entered into the Sale Deed, being 26 June 2017 (Item 2 of the table in section 109-10).

32. The acquisition date of an Easton Investments share acquired by a Minority Shareholder is the date that they entered into the Share Purchase Agreement (Item 2 of the table in section 109-10).

Scrip for scrip roll-over is chosen

33. For the purpose of determining whether a capital gain made from any later disposal of an Easton Investments share is a discount capital gain, shareholders who choose scrip for scrip roll-over are taken to have acquired their Easton Investments share when they acquired the corresponding GPS shares involved in the roll-over (Item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation11 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.*

CGT consequences

CGT event A1

34. CGT event A1 happens when an entity disposes of a CGT asset (subsection 104-10(1)). This occurs when there is a change in the ownership of a CGT asset from one entity to another (subsection 104-10(2)). The time of CGT event A1 is when the disposing entity enters into a contract for the disposal, or if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

35. CGT event A1 happened for a Majority Shareholder at the time that they entered into the Sale Deed, being 26 June 2017 (subsections 104-10(1), 104-10(2) and 104-10(3)).

36. CGT event A1 happened for a Minority Shareholder at the time that they entered into the Share Purchase Agreement (subsections 104-10(1), 104-10(2) and 104-10(3)).

37. The time when CGT event A1 happened determines the year of income in which a GPS shareholder made a capital gain or a capital loss, and may affect whether the shareholder is entitled to the CGT discount for any capital gain made.

Capital proceeds

38. The capital proceeds received by a GPS shareholder from CGT event A1 happening to their GPS share under the Sale Deed is the money and the market value of any property received or entitled to be received (worked out at the time of the event happening) in respect of the event happening (subsection 116-20(1)).

39. The term ‘in respect of the event happening’ in subsection 116-20(1) requires the relationship between the event and the receipt of the money, or the entitlement to receive the money, to be more than coincidental. An amount is not capital proceeds received or entitled to be received in respect of a CGT event merely because it is received in association with the CGT event (Taxation Ruling TR 2010/4 *Income tax: capital gains: when a dividend will be included in the capital proceeds from a disposal of shares that happens under a contract or a scheme of arrangement*).

40. The capital proceeds that the GPS shareholders received for the disposal of a GPS share is the market value of 0.20 of an Easton Investment share (\$0.312) and cash consideration of \$0.312.

Capital gain or loss

41. A GPS shareholder made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of their GPS shares were more than the cost base of the shares. A GPS shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the GPS share (subsection 104-10(4)).

Availability of partial scrip for scrip roll-over if a capital gain is made***Scrip for scrip roll-over – Subdivision 124-M***

42. A partial roll-over is available under Subdivision 124-M where a number of conditions are satisfied. The main conditions that are relevant to this scheme are:

- the shares in a company are exchanged for shares in another company
- the exchange occurs as part of a single arrangement
- conditions for roll-over are satisfied
- further conditions are not applicable or are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

43. Under the scheme, the conditions for a GPS shareholder to be eligible to choose scrip for scrip roll-over under Subdivision 124-M are satisfied. Therefore, a GPS shareholder who made a capital gain on disposal of their GPS share was entitled to choose partial scrip for scrip roll-over for the Easton Investments share they received in exchange for their GPS share.

Consequences of choosing roll-over

44. Where roll-over is available under Subdivision 124-M, any capital gain made is disregarded (subsection 124-785(1)). However, under subsection 124-790(1), only a partial roll-over is available where a shareholder receives capital proceeds for its original interest that includes something other than its replacement interest (ineligible proceeds).

45. GPS shareholders received capital proceeds comprising of a replacement interest (0.20 of a share in Easton Investments) and ineligible proceeds (cash consideration of \$0.312).

46. Therefore, only partial scrip for scrip roll-over is available for GPS shareholders who made a capital gain on the disposal of their GPS share, meaning that only part of the capital gain is disregarded under the roll-over (to the extent it does not relate to ineligible proceeds). That part of the capital gain which is referable to the receipt of ineligible proceeds is not disregarded.

47. Subsection 124-790(2) provides that the cost base (or reduced cost base) of the ineligible part is that part of the cost base of the original interest as is reasonably attributable to the ineligible proceeds. The cost base of each GPS share is therefore reduced by that part of the cost base which is reasonably attributable to the cash consideration of \$0.312.

48. The method to be used by a GPS shareholder to calculate that part of the cost base of each GPS share that is reasonably attributable to the cash consideration of \$0.312 (ineligible part cost base) is:

$$\begin{array}{l} \text{ineligible part} \\ \text{cost base} = \end{array} \quad \frac{\text{Cost Base of GPS Share} \times \$0.312}{(\text{Market value of 0.20 Easton Investments share} + \$0.312)}$$

49. The method to be used by a GPS shareholder to calculate that part of the cost base of each GPS share that is not reasonably attributable to the cash consideration of \$0.312 (eligible part cost base) is:

$$\begin{array}{l} \text{eligible part} \\ \text{cost base} = \end{array} \quad \frac{\text{Cost Base of GPS Share} \times \text{Market value of 0.20 Easton Investments share}}{(\text{Market value of 0.20 Easton Investments share} + \$0.312)}$$

Appendix 2 – Detailed contents list

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References

- Previous draft:*
- ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)
- Not previously issued as a draft
- ITAA 1997 116-20(1)(a)
 - ITAA 1997 116-20(1)(b)
- Related Rulings/Determinations:*
- TR 2006/10; TR 2010/4
- ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-783
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(3)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-790
 - ITAA 1997 124-790(1)
 - ITAA 1997 124-790(2)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
- Legislative references:*
- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)
 - ITAA 1997 104-10(3)(a)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 112-30(1)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
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ATO references

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