


CR 2019/42 - Amcor Limited - scrip for scrip roll-over

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Class Ruling

Amcor Limited – scrip for scrip roll-over

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📌 Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable 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:
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - Division 110 of the ITAA 1997
 - section 115-30 of the ITAA 1997
 - section 116-20 of the ITAA 1997
 - Subdivision 124-M of the ITAA 1997.

All 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 are Amcor Limited (**Amcor**) shareholders who:
- acquired their Amcor shares on or after 20 September 1985
 - participated in the scheme that is the subject of this Ruling

- (c) were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (and not a 'temporary resident' of Australia as defined in subsection 995-1(1)) at the time the scheme was undertaken
- (d) held their Amcor shares on capital account, and
- (e) are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their Amcor 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 14 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 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

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:

- Transaction Agreement, dated 6 August 2018, and
- Scheme Booklet, dated 12 March 2019.

Relevant entities

9. Amcor is an Australian resident company and is the head company of an Australian income tax consolidated group. Its shares are listed on the Australian Securities Exchange (ASX).

10. Bemis Company, Inc. (**Bemis**) is the head company of a US headquartered group with subsidiary operations throughout the world.

Detailed steps of the scheme

11. Step 1 – on 6 August 2018, Amcor incorporated Amcor plc (**New Amcor**), a Jersey company formerly known as Arctic Jersey Limited. New Amcor had 13,001 ordinary shares on issue with 12,999 shares held by Amcor and the remaining 2 shares held by Ogier, (Amcor's lawyers in Jersey) through Ogier Global (Jersey) Limited (a Jersey nominee company).

On the same day, New Amcor incorporated a Missouri corporation, Arctic Corp (**Merger Sub**).

12. Step 2 – on 11 June 2019 (the **Implementation Date**), pursuant to a scheme of arrangement effected under Part 5.1 of the *Corporations Act 2001*, New Amcor acquired all the shares in Amcor from Amcor shareholders with each Amcor share exchanged for the **Scheme Consideration**, being:

- one New Amcor CHESS Depositary Interest (CDI), with each CDI representing a beneficial ownership interest (but not legal title) in one New Amcor ordinary share, or
- at the election of the Amcor shareholder, one New Amcor share (or an interest that makes them absolutely entitled, for the purposes of section 106-50, to one New Amcor share).

The original New Amcor shares held by Amcor and Ogier were bought back and cancelled by New Amcor. Amcor delisted from the ASX whilst New Amcor listed on the New York Stock Exchange (NYSE) with a secondary listing on the ASX.

13. Step 3 – Bemis merged into Merger Sub (with Bemis as the surviving entity). In exchange, Bemis shareholders received 5.1 New Amcor shares for each Bemis share held, resulting in Amcor and Bemis shareholders owning approximately 71% and 29% New Amcor shares respectively.

Other matters

14. This Ruling is made on the following basis:

- all Amcor shareholders were offered the opportunity to participate in the scheme on the same terms
- a New Amcor CDI is a 'Chess Unit of Foreign Security' for the purposes of subsection 124-780(6)
- there was no 'significant stakeholder' or 'common stakeholder' in Amcor within the meaning of those expressions in section 124-783 (there was no beneficial shareholder with a membership interest of 10% or more in Amcor and Amcor had at least 300 members)
- no individual shareholder and their associates held more than 50% of the voting power in Amcor, and did not have the right to receive more than 50% of any dividends or distribution of capital (either directly or indirectly) from Amcor
- New Amcor will not make a choice under subsection 124-795(4) for scrip for scrip roll-over to not apply, and
- Amcor is not treated as if it did not have at least 300 members under section 124-810.

Ruling

CGT event A1 happened on the disposal of Amcor shares

15. CGT event A1 will happen when Amcor shareholders dispose their Amcor shares to New Amcor under the Scheme described in this Ruling (subsection 104-10(1)).

16. The time of CGT event A1 is on the Implementation Date (subsection 104-10(3)).

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

18. The capital proceeds from CGT event A1 happening is equal to the market value of the New Amcor share or CDI received on the Implementation Date (paragraph 116-20(1)(b)).

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

19. Amcor shareholders, who make a capital gain from the disposal of their Amcor shares, may choose to obtain scrip for scrip roll-over (sections 124-780 and 124-785).

20. Scrip for scrip roll-over cannot be chosen if any capital gain an Amcor shareholder might subsequently make from their replacement New Amcor share or CDI would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

Capital gain is disregarded

21. If an Amcor shareholder chooses scrip for scrip roll-over, the capital gain they make upon the disposal of an Amcor share to New Amcor is disregarded (subsection 124-785(1)).

Acquisition date of New Amcor shares and CDIs

22. If an Amcor shareholder chooses scrip for scrip roll-over, the acquisition date of the New Amcor shares or CDIs for the purpose of making a discount capital gain is the date they acquired the Amcor shares that were exchanged (item 2 of the table in subsection 115-30(1)).

Cost base and reduced cost base of the New Amcor Shares and CDIs received

23. If an Amcor shareholder chooses scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement New Amcor share or CDI received is worked out by reasonably attributing to it the cost base and reduced cost base of the Amcor share which was exchanged and for which the roll-over was obtained (subsections 124-785(2) and 124-785(4)).

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

Capital gain is not disregarded

24. An Amcor shareholder who does not choose roll-over, or cannot choose roll-over, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their Amcor shares in working out their net capital gain or net capital loss

for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

25. An Amcor shareholder, who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. Amcor shares must have been acquired, or taken to have been acquired, by the shareholder at least 12 months before the Implementation Date.

Acquisition date of New Amcor shares and CDIs

26. An Amcor shareholder who does not choose roll-over, or cannot choose roll-over, will acquire their New Amcor shares or CDIs on the Implementation Date (item 2 of the table in section 109-10).

Cost base and reduced cost base of New Amcor shares and CDIs received

27. If an Amcor shareholder does not choose roll-over, or cannot choose roll-over, the first element of the cost base and reduced cost base of the replacement New Amcor share or CDI received is equal to the market value of the Amcor share given in respect of acquiring the New Amcor share or CDI (subsections 110-25(2) and 110-55(2)). The market value of the Amcor share is worked out as at the time of the acquisition of the New Amcor share or CDI on the Implementation Date.

Commissioner of Taxation

26 June 2019

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.*

Availability of scrip for scrip roll-over under Subdivision 124-M if capital gain is made

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

29. Subdivision 124-M 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
- the exchange is in consequence of a single arrangement that satisfies subsection 124- 2) or (2A)
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

30. The scheme that is the subject of this Ruling satisfies the requirements of roll-over under Subdivision 124-M.

Appendix 2 – Detailed contents list

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References

- Previous draft:*
- ITAA 1997 115-30(1)
 - ITAA 1997 116-20
- Not previously issued as a draft
- ITAA 1997 116-20(1)(b)
- Related Rulings/Determinations:*
- TR 2006/10; CR 2014/11
- ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(2)
 - ITAA 1997 124-780(2A)
 - ITAA 1997 124-780(6)
 - 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 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 124-810
 - ITAA 1997 Div 230
 - ITAA 1997 995-1(1)
 - Corporations Act 2001
 - Corporations Act 2001 Pt 5.1
- 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)
 - ITAA 1997 104-10(4)
 - ITAA 1997 106-50
 - ITAA 1997 109-10
 - ITAA 1997 Div 110
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30
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ATO references

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