


# ***CR 2020/28 - Encompass Corporation Pty Ltd - scrip for scrip rollover***

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## Class Ruling

# Encompass Corporation Pty Ltd – scrip for scrip rollover

### **📌 Relying on this Ruling**

This publication (excluding appendix) 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.

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### **What this Ruling is about**

1. This Ruling sets out the tax consequences for Australian resident shareholders and option holders in Encompass Corporation Pty Ltd (Encompass) that exchange their shares and/or options for shares and/or options in Encompass Corporation Group Holdings Limited (Encompass UK) under the scheme to which this Ruling relates.
2. Full details of this scheme are set out in paragraphs 29 to 44 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - hold fully paid ordinary shares and/or options in Encompass (as long as option holders meet the conditions under section 83A-45, including not holding more than 10% of the shares in the company)
  - participate in the scheme that is the subject of this Ruling
  - do not hold your Encompass shares and/or options as revenue assets (as defined in section 977-50) or as trading stock (as defined in

subsection 995-1(1)); that is, the shares and/or options are held broadly on capital account for tax purposes, and

- are a resident of Australia for the purposes of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at the time the scheme is undertaken and are not a temporary resident within the meaning of the term 'temporary resident' in subsection 995-1(1).

5. This Ruling does not apply to any entity that is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 29 to 44 of this Ruling.

**Note:** Division 230 will not apply to individuals, unless they have made an election for it to apply.

### **When this Ruling applies**

6. This Ruling applies to entities that enter into the scheme from 3 June 2020 to 30 June 2021.

## **Ruling**

### **CGT event A1 will happen on the disposal of Encompass shares**

7. CGT event A1 will happen when Encompass shareholders dispose of their Encompass shares to Encompass UK under the scheme described in this Ruling (subsection 104-10(1)).

8. The time of the event is when the shares are disposed of on the Implementation Date, being 3 June 2020 (paragraph 104-10(3)(b)).

9. An Encompass shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of their Encompass shares exceed the cost base for those shares (subsection 104-10(4)).

10. An Encompass shareholder will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of their Encompass shares is less than the reduced cost base for those shares (subsection 104-10(4)).

11. The capital proceeds for each Encompass share disposed of by an Encompass shareholder will be the market value of the Encompass UK share received in respect of that disposal (paragraph 116-20(1)(b)). The market value of each Encompass UK share received is worked out at the Implementation Date.

### **Cancellation and reissue of options**

12. CGT event C2 will happen when an Encompass option holder's option is cancelled under the scheme described in this Ruling (paragraph 104-25(1)(a)).

13. The time of the event is when the option is cancelled on the day before the Implementation Date (paragraph 104-25(2)(b)).

14. An Encompass option holder will make a capital gain from CGT event C2 happening if the capital proceeds from the cancellation of their Encompass options exceed the cost base for those options (subsection 104-25(3)).

15. An Encompass option holder will make a capital loss from CGT event C2 happening if the capital proceeds from the cancellation of their Encompass options is less than the reduced cost base for those options (subsection 104-25(3)).

16. The capital proceeds for each cancelled Encompass option will be the market value of the Encompass UK option received in its place (paragraph 116-20(1)(b)). The market value of each Encompass UK option received is worked out at the time the options are cancelled, on the day before the Implementation Date.

### **Availability of scrip for scrip rollover for shareholders and option holders if capital gain is made**

17. Subject to paragraph 18 of this Ruling, an Encompass shareholder that makes a capital gain from the disposal of their Encompass shares in exchange for Encompass UK shares, or an Encompass option holder that makes a capital gain from the cancellation of their Encompass options in exchange for Encompass UK options, is eligible to choose scrip for scrip rollover (sections 124-780 and 124-785).

18. Scrip for scrip rollover cannot be chosen if any capital gain an Encompass shareholder or option holder might subsequently make from their replacement Encompass UK shares and options would be disregarded on a subsequent CGT event, except because of a rollover (paragraph 124-795(2)(a)).

19. As some Encompass shareholders and option holders are common stakeholders, section 124-782 applies in respect of those shareholders and option holders. To obtain the rollover, each of those Encompass shareholders and option holders must jointly elect with Encompass UK to obtain the rollover (paragraph 124-780(3)(d)) and must notify Encompass UK in writing of the cost base of their original interest worked out just before the disposal of the Encompass shares or the cancellation of the Encompass options under the scheme (paragraph 124-780(3)(e)).

### **Consequences if scrip for scrip rollover is chosen**

#### ***Capital gain is disregarded***

20. If an Encompass shareholder or option holder chooses scrip for scrip rollover, the capital gain they make upon the disposal of an Encompass share to Encompass UK or the cancellation of an Encompass option (as applicable) is disregarded (subsection 124-785(1)).

21. Choosing scrip for scrip rollover allows the capital gain made by the original interest holder on the disposal of their original interests to be deferred until the disposal of their replacement interests.

### **Acquisition date of Encompass UK shares and options**

22. If an Encompass shareholder chooses scrip for scrip rollover, the acquisition date of each replacement share in Encompass UK for the purpose of making a discount capital gain is the date when they acquired the original Encompass shares that were exchanged for the Encompass UK shares (table item 2 of subsection 115-30(1)).

23. If an Encompass option holder chooses scrip for scrip rollover, the acquisition date of each replacement Encompass UK option is the date the original Encompass options that were cancelled under the scheme described in this Ruling were issued to them (table item 2 in subsection 115-30(1)).

***Cost base and reduced cost base of the Encompass UK shares and options received***

24. If an Encompass shareholder or option holder chooses scrip for scrip rollover, the first element of the cost base and reduced cost base of the replacement Encompass UK shares and options received (in exchange for their Encompass shares and options) is worked out by reasonably attributing the cost base and reduced cost base (respectively) of the Encompass shares and options which were exchanged and for which the rollover was obtained (subsections 124-785(2) and 124-785(4)).

***Consequences if scrip for scrip rollover is not chosen, or cannot be chosen  
Capital gain is not disregarded***

25. An Encompass shareholder or option holder that does not choose the rollover, or cannot choose the rollover, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their Encompass shares or CGT event C2 happening on the cancellation of their Encompass options in working out their net capital gain or net capital loss for the income year in which the CGT event A1 or C2 happens. An Encompass shareholder or option holder must include any net capital gain worked out in their assessable income for the income year (section 102-5).

26. An Encompass shareholder or option holder that is not a company, makes a capital gain and does not choose or cannot choose the rollover, can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. Encompass shares or options must have been acquired, or taken to have been acquired, by the Encompass shareholder or option holder at least 12 months before their disposal or cancellation on, or the day before, the Implementation Date, as applicable.

***Acquisition date of Encompass UK shares and options***

27. An Encompass shareholder or option holder that does not choose the rollover, or cannot choose the rollover, will acquire their Encompass UK shares or options on the Implementation Date or the day before the Implementation Date, as applicable (table item 2 of section 109-10).

***Cost base and reduced cost base of the Encompass UK shares and options received***

28. If an Encompass shareholder does not choose the rollover, or cannot choose the rollover, the first element of the cost base and reduced cost base of the replacement Encompass UK shares received is equal to the market value of the Encompass shares given in respect of acquiring the Encompass UK shares (subsections 110-25(2) and 110-55(2)). If an Encompass option holder does not choose the rollover, or cannot choose the rollover, the first element of the cost base and reduced cost base of the replacement Encompass UK options received is equal to the market value of the Encompass options cancelled (subsections 110-25(2) and 110-55(2)). The market value of the Encompass shares or options is worked out as at the time of the acquisition or issue of the Encompass UK share or option (as applicable).

***Scheme***

29. The following description of the scheme is based on information provided by the applicant in the Information Memorandum dated 27 March 2020. If the scheme is not carried out as described, this Ruling cannot be relied upon.

30. All shareholders of Encompass will transfer all their shares to Encompass UK in exchange for being issued shares in Encompass UK on the Implementation Date, and all option holders of Encompass will have all their options cancelled in exchange for being issued with new options in Encompass UK the day before the Implementation Date.

### **Relevant entities**

#### ***Encompass***

31. Encompass is an unlisted proprietary company, incorporated on 13 November 2009. It is an Australian resident company for income tax purposes.
32. Encompass is the head company of an Australian Tax Consolidated Group, formed with effect from July 2015.
33. As at the date of publication of this Ruling, 3 June 2020, Encompass has 35,445,909 fully paid ordinary shares, being the only class of shares, on issue.
34. As at 3 June 2020, Encompass has 2,227,552 options on issue, of which:
- 1,229,395 are vested, and
  - 998,157 are unvested.
35. The Encompass options were issued to Australian residents pursuant to the terms of the Employee Share Option Plan Rules of Encompass dated 15 November 2016.

#### ***Encompass UK***

36. Encompass UK is a newly-formed company incorporated in England and Wales for the purposes of this scheme.
37. As at 3 June 2020, Encompass UK has 100 fully paid ordinary shares on issue.

#### ***Acquisition of Encompass by Encompass UK***

38. The scheme, as set out in the Information Memorandum, will be implemented as part of the re-domicile of the Encompass Group to the United Kingdom. It consists of Encompass UK making an offer to all shareholders of Encompass to exchange each share in Encompass for one share in Encompass UK, conditional (among other things) upon 100% acceptance by shareholders, cancellation of Encompass options, issuance of Encompass UK options, and issuance of this Ruling.
39. All options over unissued shares in Encompass will be cancelled and options over unissued shares in Encompass UK will be issued on the same terms, except that the exercise price shall be the Great British pound equivalent of the Australian dollar exercise price. The conversion of currency for the payment of the exercise price will be at the spot rate on the date of their issue.
40. Therefore, on the:
- Implementation Date, each Encompass shareholder that held Encompass shares on the offer date will receive one Encompass UK share for every one share held in Encompass such that
    - shareholders of Encompass will own 100% of the Encompass UK shares issued under this scheme in the same percentage as their existing holdings

- Encompass UK will become the holder of all the issued shares in Encompass
- day before the Implementation Date, each Encompass option holder will receive one replacement Encompass UK option for every option held in Encompass.

41. Encompass shareholders are considered to have an absolute entitlement to the Encompass shares for the purposes of section 106-50 where their shares are held via Encompass Shareholders Custodian Pty Limited in accordance with the relevant Encompass Bare Trust Deed.

## Other matters

42. This Ruling is made on the following bases:

- All dealings will be at arm's length.
- All Encompass shareholders and option holders will be offered the opportunity to participate in the scheme on the same terms.
- Encompass UK will not make a choice under paragraph 124-795(4)(a).

43. Encompass shareholders and option holders would, apart from this rollover, make a capital gain from a CGT event happening in relation to their original Encompass shares and options.

44. Some Encompass shareholders and option holders may be a 'common stakeholder' for the scheme pursuant to subsection 124-783(3).

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**Commissioner of Taxation**

3 June 2020

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## **Appendix – Explanation**

**ⓘ** *This Explanation 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 rollover if capital gain is made**

45. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in paragraphs 7 to 28 of this Ruling.

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

47. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder or option holder being eligible to choose scrip for scrip rollover. The main requirements that are relevant to the scheme that is subject to this Ruling are:

- an entity exchanges shares or options in a company for shares or options in another company (paragraph 124-780(1)(a))
- the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- the conditions in subsection 124-780(3) are satisfied
- further conditions, if applicable, are satisfied (subsections 124-780(4) and (5)), and
- exceptions to obtaining scrip for scrip rollover under section 124-795 are not applicable.

48. The scheme that is the subject of this Ruling satisfies the requirements for rollover under Subdivision 124-M.

**References***Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 83A-45
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(a)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-25(1)(a)
- ITAA 1997 104-25(2)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 106-50
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(1)(a)
- ITAA 1997 124-780(2)
- ITAA 1997 124-780(2A)
- ITAA 1997 124-780(3)
- ITAA 1997 124-780(3)(d)
- ITAA 1997 124-780(3)(e)
- ITAA 1997 124-780(5)
- ITAA 1997 124-782
- ITAA 1997 124-783(3)
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-790(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)(a)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

## ATO references

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 Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base  
 Income tax ~~ Capital gains tax ~~ Discount capital gains  
 Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip – Subdivision 124-M

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