


***CR 2020/43 - Sienna Cancer Diagnostics Ltd - scrip  
for scrip CGT roll-over relief following merger with  
BARD1 Life Sciences Ltd***

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## Class Ruling

# Sienna Cancer Diagnostics Ltd – scrip for scrip CGT roll-over relief following merger with BARD1 Life Sciences Ltd

### **📌 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.

<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
<b>Ruling</b>	<b>7</b>
<b>Scheme</b>	<b>21</b>
When this Ruling does not apply	34
<b>Appendix – Explanation</b>	<b>35</b>

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

1. This Ruling sets out the tax consequences for Australian-resident shareholders of Sienna Cancer Diagnostics Ltd (Sienna) who exchanged their shares for shares in BARD1 Life Sciences Ltd (BARD1) under the scheme to which this Ruling relates.
2. Full details of this scheme are set out in paragraphs 21 to 33 of this Ruling.
3. All legislative references in this Ruling 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:
  - held fully-paid ordinary shares in Sienna (Sienna shares) as at 23 July 2020 (the Record Date)
  - participated in the scheme that is the subject of this Ruling

- held Sienna shares on capital account for tax purposes (that is, you neither held the Sienna shares as 'revenue assets' as defined in section 977-50 nor as 'trading stock' as defined in subsection 995-1(1)), and
- were a resident of Australia for the purposes of subsection 6(1) of the *Income Tax Assessment Act 1936* and were not a temporary resident as defined in subsection 995-1(1) on 28 July 2020 (the Implementation Date).

5. This Ruling does not apply to any entity that is subject to the taxation of financial arrangement rules in Division 230 in relation to the scheme outlined in paragraphs 21 to 33 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 from 1 July 2020 to 30 June 2021.

## Ruling

### CGT event A1 will happen on the disposal of Sienna shares

7. CGT event A1 happened when you disposed of a Sienna share to BARD1 under the scheme described in this Ruling (subsection 104-10(1)).
8. CGT event A1 happened on the Implementation Date, being 28 July 2020 (subsection 104-10(3)).
9. You will make a capital gain when CGT event A1 happened if the capital proceeds from disposal of your Sienna share exceed its cost base (subsection 104-10(4)).
10. You will make a capital loss when CGT event A1 happened if the capital proceeds from the disposal of your Sienna share are less than its reduced cost base. The capital loss is the amount of the difference (subsection 104-10(4)).
11. The capital proceeds for each Sienna share were the market value of 2.6 BARD1 shares on the Implementation Date (paragraph 116-20(1)(b)).

### Availability of scrip for scrip roll-over

12. If you make a capital gain from the disposal of your Sienna share, you may choose to obtain scrip for scrip roll-over (section 124-780).
13. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from the replacement BARD1 shares 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***

14. If you choose to apply scrip for scrip roll-over, the capital gain you make upon the exchange of a Sienna share for replacement BARD1 shares is disregarded (subsection 124-785(1)).

***Acquisition date of the BARD1 shares***

15. If you choose scrip for scrip roll-over, the acquisition date of the BARD1 shares for the purpose of making a discount capital gain is the date you acquired your original Sienna shares that were exchanged for the BARD1 shares (table item 2 of subsection 115-30(1)).

***Cost base and reduced cost base of the BARD1 shares received***

16. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement BARD1 share received (in exchange for your original Sienna shares) is worked out by reasonably attributing the cost base and reduced cost base (respectively) of your original Sienna shares which were 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***

17. If you do not choose scrip for scrip roll-over, or cannot choose roll-over, you must account any capital gain or capital loss from CGT event A1 happening on the disposal of your Sienna shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

18. If you make a capital gain where roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. Sienna shares must have been acquired, or taken to have been acquired, by you at least 12 months before the Implementation Date (section 115-25).

***Acquisition date of the BARD1 shares***

19. The date of acquisition of BARD1 shares if you do not choose scrip for scrip roll-over, or cannot choose roll-over, is the date you were issued BARD1 shares, being the Implementation Date (table item 2 of section 109-10).

***Cost base and reduced cost base of the BARD1 shares received***

20. If you do not choose scrip for scrip roll-over, or cannot choose roll-over, the first element of the cost base and reduced cost base of each replacement BARD1 share received is equal to the market value of five-thirteenths of the Sienna share given in respect of acquiring each BARD1 share (subsections 110-25(2) and 110-55(2)). The market value of the Sienna shares is worked out as at the time of the acquisition of the BARD1 share on the Implementation Date.

***Scheme***

21. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

## Sienna

22. Sienna is an Australian resident company for income tax purposes. Its shares were listed on the Australian Securities Exchange (ASX) on 3 August 2017.

23. Sienna's primary business is the development and commercialisation of diagnostic tests for various types of cancer.

24. As at 8 April 2020, Sienna had the following securities on issue:

- 395,132,839 fully paid ordinary shares, and
- 11,636,666 options held by directors (and former directors) and employees (and former employees) under the Sienna Employee Share Options Plan. (This Ruling does not apply to these options).

## Scheme of arrangement

25. On 8 April 2020, Sienna announced on the ASX its intention that BARD1 would acquire all the shares and options in Sienna, subject to shareholder approval.

26. The acquisition of Sienna would be undertaken by way of a scheme of arrangement between Sienna and its shareholders under Part 5.1 of the *Corporations Act 2001*.

27. The scheme of arrangement was approved by a vote of Sienna shareholders at a meeting on 15 July 2020 and was approved by the Federal Court of Australia on 20 July 2020 pursuant to paragraph 411(4)(b) of the *Corporations Act 2001*.

28. On the Implementation Date:

- each scheme participant (other than ineligible foreign shareholders) who held Sienna shares on the Record Date received thirteen BARD1 shares for every five shares held in Sienna, and
- each scheme participant that held options in Sienna received thirteen BARD1 options for every five options or performance rights held in Sienna.

29. Sienna options and performance rights were issued under their respective Employee Share Scheme Plans and were cancelled in exchange for the replacement options and performance rights in BARD1.

30. Sienna was delisted from the ASX on 29 July 2020 and became a wholly-owned subsidiary of BARD1.

31. BARD1 will remain listed on the ASX to enable shareholders to trade their shares on the ASX.

32. Any foreign shareholders who were ineligible to receive shares in BARD1 under the scheme of arrangement had their new shares in BARD1 issued instead to a sale agent. The BARD1 shares were then sold through a share sale facility and the net proceeds were paid to the ineligible foreign shareholders.

**Other matters**

33. This Ruling is made on the following bases:

- All dealings between Sienna shareholders and BARD1 were at arm's length.
- Sienna did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme (within the meaning of those expressions in section 124-783).
- All Sienna shareholders were offered the opportunity to participate in the scheme on the same terms, and
- BARD1 will not make a choice under subsection 124-795(4) for scrip for scrip roll-over not to apply.

**When this Ruling does not apply**

34. This Ruling does not apply to options held by current and former directors and employees under the Sienna Employee Share Option Plan.

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**Commissioner of Taxation**12 August 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 roll-over if capital gain is made

35. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in paragraphs 7 to 20 of this Ruling.

36. One consequence identified in 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 of 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.

37. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is subject to 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 124-780(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.

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

**References***Previous draft:*

Not previously issued as a draft.

*Legislative references:*

- ITAA 1936 6(1)
  - 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 110-25(2)
  - ITAA 1997 110-55(2)
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 115-25
  - ITAA 1997 115-30(1)
  - ITAA 1997 116-20(1)(b)
  - ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
  - ITAA 1997 124-780(2)
  - ITAA 1997 124-780(2A)
  - ITAA 1997 124-783
  - 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 Div 230
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - TAA 1953
  - Corporations Act 2001 (CA 2001)
  - CA 2001 Part 5.1
  - CA 2001 411(4)(b)

## ATO references

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