



CR 2021/101 - Western I.V.F. Pty Ltd - scrip for scrip roll-over

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Class Ruling

Western I.V.F. Pty Ltd – scrip for scrip roll-over

📌 Relying on this Ruling

This publication 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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Western I.V.F. Pty Ltd (WIVF) that participate in a scrip for scrip arrangement with CHA SMG Australia Holding Pty Ltd (CHA).
2. Full details of this scheme are set out in paragraphs 19 to 25 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - are a holder of shares in WIVF at the time of implementation of the scheme
 - participate in the scheme that is the subject of this Ruling
 - are an Australian resident (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) or the trustee of a resident trust estate (as defined in subsection 95(2) of the ITAA 1936)
 - held your shares in WIVF neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)); that is, you held your shares on capital account.

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5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 19 to 25 of this Ruling.

When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

CGT event A1 will happen on the disposal of your Western I.V.F. Pty Ltd shares

7. CGT event A1 will happen when you dispose of your WIVF shares to CHA (section 104-10). The time of the event is when you enter into the contract for the disposal (paragraph 104-10(3)(a)).

Capital gain or capital loss

8. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a WIVF share exceeds its cost base. You will make a capital loss if those capital proceeds were less than its reduced cost base (subsection 104-10(4)).

If a capital gain is made

Availability of scrip for scrip roll-over under Subdivision 124-M for your Western I.V.F. Pty Ltd shares

9. Subject to the qualification in paragraph 10 of this Ruling, if you make a capital gain from a disposal of your WIVF share, you may choose to obtain scrip for scrip roll-over (section 124-780).

10. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from the replacement shares in CHA would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

11. If you choose to apply scrip for scrip roll-over, the capital gain you make upon the exchange of a WIVF share for a replacement CHA share will be disregarded (subsection 124-785(1)).

Acquisition date of CHA SMG Australia Holding Pty Ltd shares

12. If you choose scrip for scrip roll-over, in determining whether you later make a discount capital gain, the acquisition date of the CHA shares is the date you acquired your original WIVF shares that were exchanged for the CHA shares (table item 2 of subsection 115-30(1)).

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Cost base and reduced cost base of CHA SMG Australia Holding Pty Ltd shares received

13. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement CHA share (received in exchange for your original WIVF shares) is worked out by reasonably attributing to it a portion of the aggregated cost base and aggregated reduced cost base (respectively) of your original WIVF shares which were exchanged and roll-over chosen (subsections 124-785(2) and (4)).

Partial roll-over

14. Under the scheme, the consideration to be provided by CHA for the acquisition of WIVF shares includes an option to receive cash and replacement shares. In accordance with section 124-790, where a shareholder receives cash in respect of the disposal of part of their shareholding in WIVF, the roll-over will not apply in respect of that part of the disposal.

Consequences if scrip for scrip roll-over is not chosen

Capital gain is not disregarded

15. If scrip for scrip roll-over is not chosen, you must include in your tax return any capital gain or capital loss made from CGT event A1 happening on a disposal of your WIVF 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).

16. If you make a capital gain where scrip for scrip roll-over is not chosen, you can treat the capital gain as a 'discount capital gain' provided the conditions of Subdivision 115-A are met. WIVF shares must have been acquired, or taken to have been acquired, by you at least 12 months before the shares are sold to CHA (section 115-25).

Acquisition date of CHA SMG Australia Holding Pty Ltd shares

17. The date of acquisition of CHA shares, if scrip for scrip roll-over is not chosen, is the date you were issued CHA shares (table item 2 of section 109-10).

Cost base and reduced cost base of CHA SMG Australia Holding Pty Ltd shares received

18. If scrip for scrip roll-over is not chosen, the first element of the cost base and reduced cost base of each replacement CHA share received is equal to a reasonably attributable portion of the aggregated market value of the WIVF shares given in respect of acquiring the CHA shares (subsections 110-25(2) and 110-55(2)). The market value of the WIVF shares is worked out at the time of the acquisition of the CHA shares.

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Scheme

19. 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.

Western I.V.F. Pty Ltd

20. WIVF is an Australian-resident private company, which owns 100% of Fertility Specialists South Pty Ltd (FSS), an Australian-resident private company that operates a fertility business. WIVF and FSS have not formed a tax consolidated group.

21. WIVF has shareholders, holding a total of 600,000 shares, that are all Australian residents and not related to each other.

22. The shareholders of WIVF are proposing to enter into a transaction with CHA (Sale Transaction) under which CHA will acquire 100% of the shares in WIVF. CHA is the head company of a tax consolidated group. The Sale Transaction will occur through a Share Sale Agreement (SSA) with the shareholders of WIVF.

23. Under the Sale Transaction, WIVF shareholders are eligible to choose to receive consideration for their WIVF shares under one of the following options:

- 100% scrip in CHA, or
- 75.72% cash and 24.28% scrip in CHA.

24. CHA will pay a maximum of \$22,190,000 in cash under the Sale Transaction. To the extent the cash payable under the second option in paragraph 23 of this Ruling would otherwise exceed this cap, the cash percentage will reduce (and the scrip percentage will increase) to ensure the total cash paid by CHA does not exceed the cap.

25. WIVF has confirmed there is no formal or informal agreement, promise or understanding between any of the parties to the Sale Transaction that requires any WIVF shareholder to only choose the 100% scrip option when selling their shares to CHA.

Commissioner of Taxation

22 December 2021

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References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 95(2)
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - 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 Subdiv 115-A
 - ITAA 1997 115-25
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(3)
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-790
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
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ATO references

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Income tax ~ Capital gains tax ~ Rollovers ~ Scrip for scrip - Subdivision 124-M

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