


# ***CR 2021/33 - Red Hot Australia HoldCo Pty Limited - scrip for scrip roll-over***

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## Class Ruling

# Red Hot Australia HoldCo Pty Limited – scrip for scrip roll-over

### **📌 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.

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

1. This Ruling sets out the tax consequences for Australian-resident shareholders of Red Hot Australia HoldCo Pty Limited (Red Hot HoldCo) who exchanged their shares for shares in Pepper Global TopCo Limited (Pepper Global TopCo) on 29 March 2021.
2. Full details of this scheme are set out in paragraphs 22 to 35 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:
  - held Red Hot HoldCo shares, being ordinary shares or Management Incentive Share Plan (MISP) shares in Red Hot HoldCo
  - did not hold your Red Hot HoldCo shares as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)); that is, the shares were held on capital account for tax purposes
  - participated in the scheme that is the subject to this Ruling
  - were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* on 29 March 2021 (the Implementation Date)
  - are not exempt from income tax, and

- are not subject to the operation of the investment manager regime in Subdivision 842-I.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 22 to 35 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**

7. CGT event A1 happened when you disposed of your Red Hot HoldCo shares to Pepper Global TopCo under the scheme described in this Ruling (subsection 104-10(1)).

8. The timing of the event is when the contract for the disposal of the shares in Red Hot HoldCo was entered into, being the Implementation Date (paragraph 104-10(3)(a)).

9. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Red Hot HoldCo share exceeded the cost base for that share. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Red Hot HoldCo share were less than the reduced cost base for that share (subsection 104-10(4)).

10. The capital proceeds from CGT event A1 happening is equal to the market value of the Pepper Global TopCo shares received on the Implementation Date (paragraph 116-20(1)(b)).

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

11. Subject to paragraph 12 of this Ruling, if you made a capital gain from the disposal of your shares, you may choose to obtain scrip for scrip roll-over (sections 124-780 and 124-785).

12. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from your replacement Pepper Global TopCo share 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***

13. If you choose scrip for scrip roll-over, the capital gain you made upon the disposal of a Red Hot HoldCo share to Pepper Global TopCo is disregarded (subsection 124-785(1)). This is because you will only receive a replacement share in Pepper Global TopCo for disposing of your Red Hot HoldCo share (subsection 124-790(1)).

14. Choosing scrip for scrip roll-over allows the capital gain you made (as the original interest holder) on the disposal of your original interests to be deferred until the disposal of your replacement interests.

**Acquisition date of Pepper Global TopCo Limited shares**

15. The acquisition date of each replacement share in Pepper Global TopCo is the date you acquired your original Red Hot HoldCo share (table item 2 in subsection 115-30(1)).

**Cost base and reduced cost base for Pepper Global TopCo Limited shares received**

16. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Pepper Global TopCo share you received is worked out by reasonably attributing to it the cost base and reduced cost base of the Red Hot HoldCo share which was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

17. In this case, due to the one for one exchange ratio, the existing cost base of your Red Hot HoldCo share becomes the cost base of your replacement Pepper Global TopCo share.

**Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen****Capital gain is not disregarded**

18. If you do not choose roll-over, or cannot choose roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your Red Hot HoldCo shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens. You must include any net capital gain worked out in your assessable income for the income year (sections 102-5 and 102-10).

19. If you made a capital gain you can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, you must have acquired your Red Hot HoldCo shares at least 12 months before their disposal to Pepper Global TopCo.

**Acquisition date of Pepper Global TopCo Limited shares**

20. The acquisition date of each replacement share in Pepper Global TopCo is 29 March 2021, the date the disposal contract was entered into (table event number A1 (case 1) in subsection 109-5(2)).

**Cost base and reduced cost base of Pepper Global TopCo Limited shares received**

21. The first element of the cost base and reduced cost base of a replacement Pepper Global TopCo share received is equal to the market value of each Red Hot HoldCo share given in respect of acquiring the Pepper Global TopCo share, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

**Scheme**

22. 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.

23. The scheme that is the subject of this Ruling is limited to the scrip for scrip transaction described in this Ruling. The Ruling does not address whether the scrip for scrip transaction has any implications for any broader restructure arrangement.

**Relevant entities*****Red Hot Australia HoldCo Pty Limited***

24. Red Hot HoldCo is an Australian proprietary company incorporated on 7 July 2017 and is a resident of Australia for taxation purposes.

25. As at the Implementation Date, Red Hot HoldCo had 248,086,385 ordinary shares and 53,716,538 MISP shares on issue.

26. MISP shares are fully-paid shares in the capital of Red Hot HoldCo that track, or will be calculated by reference, to the growth in the relevant identified business unit. MISP shares have:

- the right to receive dividends at the sole and absolute discretion of the Board
- no voting rights (except where it relates to the variation or abrogation of the rights attached to the MISP share, or where required by the *Corporations Act 2001*)
- no right to receive paid up capital and surplus assets in the event of a winding up
- the right to receive value, as determined by a formula, in Red Hot HoldCo – the formula for each class of MISP share tracks the value of a particular business unit of Red Hot HoldCo (with each class tracking a different business unit).

***Red Hot Australia BidCo Pty Limited***

27. Red Hot Australia BidCo Pty Limited (Red Hot BidCo) is an Australian proprietary company incorporated on 7 July 2017 and is a resident of Australia for taxation purposes.

28. Red Hot BidCo is wholly owned by Red Hot HoldCo.

***Pepper Group Pty Limited***

29. Pepper Group Pty Limited (PGL) was an Australian public company that was listed on the Australian Securities Exchange (ASX) from 31 July 2015 until 5 December 2017.

30. Under a scheme of arrangement in November 2017, approximately 94% of PGL was acquired by Red Hot BidCo, which included a scrip for scrip offer by Red Hot BidCo's parent, Red Hot HoldCo. As a result, PGL is now a privately-held company and is no longer listed on the ASX.

**Restructure*****Pepper Global TopCo Limited***

31. Pepper Global TopCo was incorporated in Jersey on 30 September 2019 and is a United Kingdom resident for taxation purposes.

32. Pepper Global TopCo has two shares on issue, with nominal share capital.

***Scrip for scrip transaction***

33. Pepper Global TopCo made an offer to all shareholders of Red Hot HoldCo to exchange their shares in Red Hot HoldCo for shares in Pepper Global TopCo, which was communicated to Red Hot HoldCo shareholders on or around 11 March 2021.

34. The consideration for the purchase of Red Hot HoldCo shares made by Pepper Global TopCo was shares in the capital of Pepper Global TopCo, issued to participating shareholders of Red Hot HoldCo, with the equivalent rights to their existing ordinary shares or MISP shares in the proportions of each shareholder's share ownership at a rate of 1:1.

35. The share-for-share exchange completed on the Implementation Date.

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**Commissioner of Taxation**5 May 2021

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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.*

### **Scrip for scrip roll-over**

36. Scrip for scrip roll-over under Subdivision 124-M 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 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 (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, and
- exceptions to obtaining scrip for scrip 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)(a)
- ITAA 1997 104-10(4)
- ITAA 1997 109-5(2)
- 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 124-785
- 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 Div 230
- ITAA 1997 Subdiv 842-I
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001

## ATO references

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