


CR 2022/20 - Tritium Holdings Pty Ltd - scrip for scrip roll-over

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Status: **legally binding**

Class Ruling

Tritium Holdings Pty Ltd – scrip for scrip roll-over

❶ 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 income tax consequences for Australian-resident shareholders of Tritium Holdings Pty Ltd (T Hold) who exchanged their T Hold shares for shares in Tritium DCFC Limited (Tritium DCFC).
2. Full details of the scheme are set out in paragraphs 21 to 26 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this scheme. Potential participants must form their own view about the scheme.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - held T Hold shares, being ordinary shares, C Class shares or N Class shares in T Hold, on the 13 January 2022 (Implementation Date)
 - did not hold your T Hold shares as revenue assets (as defined in section 977-50) or 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 of this Ruling

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- were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* on the Implementation Date, and
- are not exempt from income tax.

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 21 to 26 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 2021 to 30 June 2022.

Ruling

CGT event A1

7. CGT event A1 happened when you disposed of your T Hold shares to Tritium DCFC under the scheme described in this Ruling (subsection 104-10(1)).

8. The timing of the event is when the change in ownership occurred, being the Implementation Date (paragraph 104-10(3)(b)).

9. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a T Hold share exceed the cost base for that share. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a T Hold share is 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 Tritium DCFC shares you received under the scheme (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over under Subdivision 124-M

11. Subject to paragraph 12 of this Ruling, if you make a capital gain from the disposal of your shares, you may choose to obtain scrip for scrip roll-over.

12. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from your replacement Tritium DCFC share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

13. If you choose scrip for scrip roll-over, the capital gain you make upon the exchange of a T Hold share for Tritium DCFC shares is disregarded (subsection 124-785(1)).

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

15. The acquisition date of each replacement share in Tritium DCFC for the purpose of making a discount capital gain is the date you acquired your original T Hold shares that were exchanged for the Tritium DCFC shares (table item 2 of subsection 115-30(1)).

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16. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Tritium DCFC share you received is worked out by reasonably attributing the cost base and reduced cost base of your original T Hold shares which were exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

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

17. If you do not choose roll-over, or cannot choose roll-over, you must account for any capital gain or capital loss from CGT event A1 happening on the disposal of your T Hold shares (in exchange for Tritium DCFC 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 made a capital gain, you can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, you must have acquired your T Hold shares at least 12 months before the Implementation Date (section 115-25).

19. The date of acquisition of each replacement share in Tritium DCFC is the date you were issued Tritium DCFC shares, being the Implementation Date (table item 2 of section 109-10).

20. The first element of the cost base and reduced cost base of each replacement Tritium DCFC share received is equal to the market value of the T Hold shares given in respect of acquiring each Tritium DCFC share (subsections 110-25(2) and 110-55(2)). The market value of the T Hold shares is worked out as at the time of the acquisition of the Tritium DCFC shares 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.

Tritium Holdings Pty Ltd

22. T Hold is the head company of an Australian-based economic group which focuses on the research, development, testing and manufacturing of power electronic systems and renewable energy solutions, and the associated sale of fast chargers for electric motor vehicles. The main Australian business is carried on by T Hold's wholly-owned Australian subsidiary, Tritium Pty Ltd.

23. T Hold has expanded its business to the United States of America (US) and European markets through the establishment of five foreign-subsidary entities. Two subsidiaries are US-resident entities, two subsidiaries are resident entities of The Netherlands and one subsidiary is a resident entity of the United Kingdom.

Exchange of shares

24. To continue to increase access to capital and a broader range of investors, the T Hold Board of Directors has entered into an arrangement, including the Business Combination Agreement with Decarbonisation Plus Acquisition Corporation II (DCRN), to

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undertake the scheme set out in this Ruling (the Scheme). DCRN is a special purpose acquisition company and is a US-listed company that was formed to raise capital through an initial public offering.

25. The Scheme has the following steps:

- A new company, Tritium DCFC, was established, which is an Australian-incorporated and tax-resident company. The sole shareholder of Tritium DCFC is not a T Hold shareholder and is not related to the existing T Hold shareholders or the DCRN shareholders.
- Tritium DCFC established a new wholly-owned subsidiary company, Hulk Merger Sub Inc (Merger Sub), incorporated in Delaware, US.
- Merger Sub merged with, and into, DCRN under US law, with DCRN surviving. DCRN shareholders received Tritium DCFC shares or warrants in exchange for their shares or warrants in DCRN. The exchange was undertaken at market value.
- Simultaneously with the merger, Tritium DCFC acquired 100% of the shares in T Hold in exchange for issuing new shares in Tritium DCFC to the existing T Hold shareholders. The exchange was undertaken at market value.

Other matters

26. This Ruling is made on the basis of the following:

- All dealings were at arm's length. T Hold is not a 'significant stakeholder' in relation to the Scheme (within the meaning of the expression in section 124-783).
- T Hold is a 'common stakeholder' in relation to the Scheme (within the meaning of the expression in section 124-783).
- All T Hold shareholders were offered the opportunity to participate in the Scheme on the same terms.
- Tritium DCFC has not made a choice under subsection 124-795(4) for scrip for scrip roll-over not to apply.
- T Hold and Tritium DCFC shareholders have jointly elected to obtain a roll-over in accordance with paragraph 124-780(3)(d) and have communicated this in writing in accordance with paragraph 124-780(3)(e).

Commissioner of Taxation

16 March 2022

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Appendix – Explanation

❶ *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

27. The tax consequences that arise concerning the Scheme are outlined in paragraphs 7 to 20 of this Ruling.

28. 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.

29. 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 are:

- an entity exchanges shares in a company for shares in another company
- the exchange is in consequence of a single arrangement that satisfies subsections 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.

30. The Scheme satisfies the requirements for roll-over under Subdivision 124-M.

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References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780(2)
 - ITAA 1997 124-780(2A)
 - ITAA 1997 124-780(3)(d)
 - ITAA 1997 124-780(3)(e)
 - ITAA 1997 124-783
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - 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
 - ITAA 1936 6(1)
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(3)(b)
 - 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)
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ATO references

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ATOlaw topic: Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 - disposal of a CGT asset
 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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