


CR 2024/6 - Healthia Limited - scheme of arrangement

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Status: **legally binding**

Class Ruling

Healthia Limited – scheme of arrangement

① 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 Healthia Limited (Healthia) shareholders who exchanged their Healthia shares on 11 December 2023 (Implementation Date) for Class B shares in Harold Topco Ltd (Harold Topco), an entity predominantly owned by funds advised by Pacific Equity Partners, by way of a scheme of arrangement (Scheme).
2. Details of this scheme are set out in paragraphs 23 to 34 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 shares in Healthia on the 4 December 2023 (Scheme Record Date) and exchanged them for shares in Harold Topco on the Implementation Date under the Scheme, and
 - held your shares on capital account for income tax purposes – that is, you did not hold your shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).
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 23 to 34 of this Ruling.

Status: **legally binding**

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 2023 to 30 June 2024.

Ruling

CGT event A1 happened on the disposal of your Healthia Limited shares

7. CGT event A1 happened when you exchanged your Healthia shares for Harold Topco shares (subsection 104-10(1)).

8. The time of the CGT event A1 was the Implementation Date (paragraph 104-10(3)(b)).

9. You make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Healthia shares exceed their cost base. You make a capital loss if the capital proceeds were less than their reduced cost base (subsection 104-10(4)).

10. The capital proceeds from CGT event A1 happening are equal to the market value of the corresponding Harold Topco shares you received in exchange (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over

11. If you make a capital gain from the exchange of your Healthia shares, you may choose to obtain scrip for scrip roll-over for that gain (section 124-780).

Consequences if you choose scrip for scrip roll-over

Capital gain is disregarded on disposal of your Healthia Limited shares

12. If you choose scrip for scrip roll-over you will be able to disregard any capital gain from CGT event A1 happening in respect of the disposal of your Healthia shares exchanged for Harold Topco shares (subsection 124-785(1)).

13. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from the replacement Harold Topco shares would be disregarded, except because of a roll-over; for example, you hold your replacement Harold Topco shares as trading stock (paragraph 124-795(2)(a)).

Cost base and reduced cost base of Harold Topco Ltd shares

14. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Harold Topco share you received is worked out by reasonably attributing to it the cost base and reduced cost base of the Healthia share for which it was exchanged (subsections 124-785(2) and (4)).

15. You can calculate the first element of the cost base and reduced cost base of each replacement Harold Topco share by dividing the aggregate cost bases of your Healthia shares by the number of replacement Harold Topco shares you received.

Status: **legally binding**

Acquisition date of corresponding Harold Topco Ltd shares

16. If you choose scrip for scrip roll-over, the date of acquisition of the replacement Harold Topco shares is the date you acquired your original shares in Healthia (table item 2 of subsection 115-30(1)).

Consequences if you do not choose scrip for scrip roll-over

Capital gain is not disregarded on disposal of your Healthia Limited shares

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

Cost base and reduced cost base of corresponding Harold Topco Ltd shares

19. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of your replacement Harold Topco shares is equal to the market value of the Healthia shares you exchanged. The market value of your Healthia shares is worked out at the time you acquired the replacement shares in Harold Topco, which is on the Implementation Date (paragraph 110-25(2)(b) and subsection 110-55(2)).

Foreign resident shareholders

20. If you were a foreign resident or the trustee of a foreign trust (for CGT purposes as defined in subsection 955-1(1)) that held Healthia shares on the Implementation Date, and your Healthia shares were not taxable Australia property for the purposes of subsection 855-10(1), you disregard any capital gain or capital loss made when CGT event A1 happened in relation to your Healthia share, unless you:

- used your Healthia shares at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- are an individual and your Healthia shares were covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

Shareholders that held pre-CGT shares in Healthia Limited

21. If you acquired, or are taken to have acquired, your Healthia shares before 20 September 1985, disregard any capital gain made when CGT event A1 happened to your Healthia shares (paragraph 104-10(5)(a)).

Status: **legally binding**

Harold Topco Ltd shareholders are absolutely entitled to Harold Topco Ltd shares held on bare trust

22. Harold Topco shareholders are considered to have an absolute entitlement to the Harold Topco shares for the purposes of section 106-50 where their shares are held via Pacific Custodians Pty Ltd (Nominee) in accordance with the Nominee Deed.

Scheme

23. 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.

24. Healthia (ACN 626 087 223) is an integrated allied healthcare organisation, listed on the Australian Securities Exchange. Its operations include networks of optometry, podiatry, physiotherapy and hand therapy clinics with a diversified portfolio of 332 businesses across Australia and New Zealand.

25. As at the Implementation Date, Healthia had over 300 shareholders (with section 124-810 having no application).

26. Healthia has one foreign shareholder with a relevant interest exceeding 10%.

27. The sum of Healthia's assets which are taxable Australian real property do not exceed the sum of the market values of its assets that are not taxable Australian real property.

Scheme of Arrangement

28. On 31 August 2023 Healthia entered into a Scheme Implementation Deed (SID) with Harold BidCo Pty Ltd (ACN 670 606 827), a wholly owned subsidiary of Harold Topco and ultimately owned by funds advised by Pacific Equity Partners, to acquire 100% of the fully diluted share capital in Healthia by way of a Part 5.1 of the *Corporations Act 2001* Scheme of Arrangement.

29. The Scheme was approved by Healthia shareholders at the shareholders meeting on 22 November 2023.

30. The Scheme cash consideration was \$1.80 per Healthia share. Alternatively, shareholders were able to select from either of the following equity alternatives if eligible:

- all scrip consideration: 1 Class B share in Harold Topco, an unlisted newly incorporated Australian public company, for each Healthia share held on the Scheme Record Date (4 December 2023), subject to any scale back that was to ensure that the total number of Class B shares did not exceed 30% of the total shares on issue in Harold Topco (Scrip Scale Back), or
- mix and match: Class B shares in Harold Topco in exchange for between 30% and 100% of their Healthia shares (subject to the scale back described in the previous dot point) and \$1.80 cash consideration for each remaining Healthia share.

Nominee arrangement for Harold Topco Ltd shares

31. It is a requirement under the Harold Topco Shareholders' Deed that Harold Topco have no more than 50 shareholders.

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32. To give effect to this requirement, the Class B shares in Harold Topco to which the eligible exchanging Healthia shareholders (who make a valid scrip election) are entitled, are to be held by an independent third-party trustee, Pacific Custodians Pty Limited (Nominee) on their behalf.

33. In accordance with the Harold Topco Shareholders Deed and (associated) Nominee Deed, the Nominee will hold the Class B shares on bare trust for each of the eligible exchanging Healthia shareholders who will be absolutely entitled to the underlying shares as against the trustee (Nominee) for the purposes of section 106-50 and will therefore be treated as though they held the Class B shares in Harold Topco directly.

Eligibility to receive scrip consideration

34. Healthia shareholders with a registered address recorded as a place outside Australia, or New Zealand (where the Healthia shareholder completed and returned a New Zealand investor certificate certifying the shareholder is a wholesale investor (as defined in Schedule 1 of the *Financial Markets Conduct Act 2013* of New Zealand)), were not entitled to select any scrip consideration unless Healthia and Harold BidCo Pty Ltd agreed in writing.

Commissioner of Taxation

31 January 2024

Status: **not legally binding**

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 a capital gain is made

35. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from the disposal of a share 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.

36. 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:

- shares in one company are exchanged for shares in another company
- the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- the conditions for the roll-over under subsection 124-780(3) are satisfied
- further conditions in subsection 124-781(4), if applicable, are satisfied, and
- exceptions for the roll-over in section 124-795 are not applicable.

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

Status: **not legally binding**

References

Legislative references:

- 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 104-10(5)(a)
 - ITAA 1997 104-165(3)
 - ITAA 1997 106-50
 - ITAA 1997 110-25(2)(b)
 - 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 124-780(3)
 - ITAA 1997 124-781
 - ITAA 1997 124-781(2)
 - ITAA 1997 124-781(2A)
 - ITAA 1997 124-781(3)
 - ITAA 1997 124-781(4)
 - ITAA 1997 124-783
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 124-810
 - ITAA 1997 Div 230
 - ITAA 1997 855-10(1)
 - ITAA 1997 855-15
 - ITAA 1997 955-1(1)
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Financial Markets Conduct Act 2013 Sch 1 (NZ)
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ATO references

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