


# ***CR 2025/35 - Canva, Inc - scrip for scrip roll-over treatment of stock options subject to start-up concession***

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Status: **legally binding**

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## Class Ruling

# Canva, Inc – scrip for scrip roll-over treatment of stock options subject to start-up concession

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### **📌 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 certain holders of ‘start-up’ stock options in the entity formerly known as Canva, Inc. (now registered as Canva Australia Holdings Pty. Ltd.) (Canva), who had their options replaced with stock options in the new Canva, Inc. (New Canva) in connection with the restructure of the Canva corporate group, which commenced on 13 February 2025 (AEDT) (Restructure).
2. Details of this scheme are set out in paragraphs 25 to 54 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 an individual
  - you participated in the Canva, Inc. Employee Option Plan dated 8 June 2016 (2016 Employee Option Plan) under which you were granted stock options in Canva (Canva stock options), which met the conditions for the start-up concessions in section 83A-33
  - immediately before and at the time of the Restructure
    - you were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*, or a temporary resident within the meaning of subsection 995-1(1)

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- you held the Canva stock options pursuant to the 2016 Employee Option Plan
- if you were a temporary resident within the meaning of subsection 995-1(1), your Canva stock options were not taxable Australian property within the meaning of section 855-15
- you were employed by Canva or one of its subsidiaries
- as a result of the Restructure, your Canva stock options were replaced with stock options in New Canva (New Canva stock options)
- at the time you acquired the New Canva stock options
  - you did not hold a legal or beneficial interest in more than 10% of New Canva shares, and
  - you were not in a position to cast, or control the casting, of more than 10% of the maximum number of votes that might be cast at a general meeting of New Canva, and
- if you were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*, exercising the stock option will cause Division 134 to apply to you.

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 25 to 54 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 2024 to 30 June 2025.

## **Ruling**

### **Continuation of stock options**

7. The New Canva stock options you received as part of the Restructure satisfied the conditions under subsection 83A-130(1).

8. Therefore, the New Canva stock options you received in exchange for the cancellation of your Canva stock options are treated as a continuation of your Canva stock options for the purposes of Division 83A (subsection 83A-130(2)).

9. If you were a resident of Australia, for discount capital gains purposes under Subdivision 115-A, if you acquire New Canva shares as a result of the exercise of your New Canva stock options, you are taken to have acquired the shares on the date you acquired the corresponding Canva stock option (table item 9A of subsection 115-30(1)).

### **CGT event C2 happens**

10. CGT event C2 happened to each of your Canva stock options when it was cancelled as part of the Restructure.

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11. The time of the CGT event is the date when your Canva stock options were cancelled (paragraph 104-25(2)(b)).
12. Subject to the application of Subdivision 124-M and section 768-915:
- You will make a capital gain if the capital proceeds received for a stock option exceeds its cost base. The capital gain is the amount of the excess.
  - You will make a capital loss if the reduced cost base of a stock option exceeds the capital proceeds. The capital loss is the amount of the difference (subsection 104-25(3)).
13. The capital proceeds are equal to the market value of the New Canva stock option you received in respect of the cancellation of your Canva stock option, worked out at the time your Canva stock option ended (paragraph 116-20(1)(b)).

#### **Availability of scrip for scrip roll-over relief under Subdivision 124-M**

14. Paragraphs 15 to 23 of this Ruling apply to you if you were a resident of Australia.
15. You will be able to choose to obtain scrip for scrip roll-over relief under section 124-780 for each Canva stock option that was exchanged for a New Canva stock option if:
- you would, apart from the roll-over, make a capital gain from CGT event C2 happening to a Canva stock option, and
  - any capital gain that may be made upon a CGT event happening in relation to the New Canva stock option received as part of the Restructure would not be disregarded (except because of a roll-over) (paragraph 124-795(2)(a)).

#### **Consequences if you choose scrip for scrip roll-over relief**

##### ***Capital gain is disregarded***

16. If you choose to obtain scrip for scrip roll-over relief, the capital gain that you would otherwise have made from CGT event C2 happening to your Canva stock option is disregarded (subsection 124-785(1)).

##### ***Cost base and reduced cost base***

17. If you choose to obtain the scrip for scrip roll-over relief, the first element of the cost base and reduced cost base of each New Canva stock option you received in exchange is worked out by attributing to it the cost base of the corresponding Canva stock option for which it was exchanged (subsections 124-785(2) and (4)).

##### ***Acquisition date***

18. If you choose scrip for scrip roll-over relief, you are taken, for the purposes of applying the CGT discount, to have acquired each of your New Canva stock options when you acquired the corresponding Canva stock option for which it was exchanged (table item 2 of subsection 115-30(1)).

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**Consequences if you do not, or cannot, choose scrip for scrip roll-over relief*****Capital gain is not disregarded***

19. If you do not, or cannot, choose the scrip for scrip roll-over relief, the capital gain you made from the cancellation of your Canva stock option will not be disregarded.

20. You must take into account any capital gain or capital loss from CGT event C2 happening on the cancellation of your Canva stock option in working out your net capital gain or net capital loss for the income year in which the CGT event C2 happened (sections 102-5 and 102-10). You must include any net capital gain worked out in your assessable income for the income year.

***Capital gain may be a discount capital gain***

21. If you do not, or cannot, choose the scrip for scrip roll-over relief, you can treat any resulting capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. You must have held the relevant Canva stock option for at least 12 months before the CGT event.

***Cost base and reduced cost base***

22. If you do not, or cannot, choose the scrip for scrip roll-over relief, the first element of the cost base and reduced cost base of each New Canva stock option acquired as part of the Restructure is equal to the market value of the Canva stock option exchanged for the New Canva stock option. The market value of the Canva stock option is worked out at the time of the acquisition of the New Canva stock option (subsection 110-25(2)).

***Acquisition date***

23. If you do not, or cannot, choose the scrip for scrip roll-over relief, you will be taken to have acquired your New Canva stock option when it was issued to you (table item 2 of section 109-10).

***Consequences for temporary residents***

24. If you were a temporary resident, any capital gain or capital loss you made from CGT event C2 happening to your Canva stock option is disregarded (subsection 768-915(1)).

**Scheme**

25. 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.

**Background**

26. Canva was incorporated in the State of Delaware in the United States of America (US) on 28 June 2012 under the *Delaware General Corporation Law (DGCL)*.

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27. Canva is a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) and a resident of the US for tax purposes.

28. Canva is the head company of the Canva income tax consolidated group comprising Canva, Canva Pty Ltd (CPL) and its wholly owned Australian subsidiaries. Canva also owns shares in various non-Australian subsidiaries directly and indirectly through CPL.

29. Canva had the following classes of shares on issue:

- Class A common stock
- Class B common stock
- FF preferred stock and
- preferred stock.

### **Stock plans**

30. Canva maintained several stock plans for employees, directors and consultants of Canva and its subsidiaries (participants).

31. One such plan was the 2016 Employee Option Plan (Plan) under which participants were granted stock options which met the conditions for the start-up concessions in section 83A-33.

32. The stock options were governed by the rules of the Plan and were subject to the agreements associated with the Plan.

33. The key features of stock options issued under the Plan were broadly as follows:

- stock options were granted to participants for nil consideration
- stock options issued under the Plan were subject to such vesting conditions as specified in the relevant offer, such as time, exit and liquidity event conditions
- the exercise price of the options was set at the market value of the ordinary shares in Canva as at the date of grant of the options in accordance with paragraph 83A-33(5)(b), and
- options issued under the Plan could only be transferred in limited circumstances, including with prior written consent of the Canva board or after an 'exit event' (as defined in the Plan).

### **Restructure**

34. As part of the restructuring of the Canva global corporate group, commencing on 13 February 2025 (AEDT), New Canva was incorporated as the ultimate holding company of the Canva group.

35. Participation in the Restructure was available on the same terms to all interest holders of a particular type in Canva.

36. Post-Restructure, CPL intends to continue its business operations in substantially the same manner.

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**Detailed steps of the Restructure**

37. In carrying out the Restructure, the steps detailed at paragraphs 38 to 51 of this Ruling were undertaken.

**Step 1: Incorporation of new company**

38. New Canva was incorporated in Delaware as a wholly owned subsidiary. Canva owned all the shares in New Canva.

**Step 2: Incorporation of Merger Sub**

39. A wholly owned subsidiary of New Canva was incorporated in Delaware in the US (Merger Sub). New Canva owned all the shares in Merger Sub.

**Step 3: The Merger**

40. Pursuant to section 251(g) of the DGCL, the following steps occurred (collectively, the Merger):

- Canva surrendered its shares in New Canva.
- Merger Sub merged with and into Canva under a 'reverse triangular merger'.
- All shares of Canva were immediately cancelled and converted into a right to receive the same number of shares in New Canva, with the same rights, privileges and preferences as applied to the previously outstanding shares of Canva
- Canva survived the merger as a wholly owned subsidiary of New Canva.

41. The Merger happened in accordance with section 251(g) of the DGCL and subject to and upon the terms and conditions of a merger agreement (Merger Agreement) entered into between Canva, New Canva and Merger Sub. (collectively, the Parties).

42. The Merger became effective on 13 February 2025 (AEDT) (12 February 2025 US Eastern Standard Time (EST)) (Effective Time).

43. At the Effective Time, by virtue of the Merger and without any further action by the Parties or Canva shareholders:

- Merger Sub was merged with and into Canva, the separate corporate existence of Merger Sub ceased, and Canva continued as the surviving corporation of the Merger with all the contractual rights and obligations of Merger Sub being assumed by Canva as a result of the Merger. Under the DGCL, Merger Sub did not dissolve. Rather, the separate corporate existence of Merger Sub ceased to exist, and Canva continued as the surviving corporation, assuming all contractual rights and obligations of Merger Sub.
- All shares of Canva held by shareholders were cancelled under section 251(g) of the DGCL. In exchange, New Canva issued an identical number of shares with the same terms as the cancelled Canva shares. As a result, shareholders of Canva ceased to hold shares in Canva but instead became shareholders of New Canva.

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- The ownership percentage or rights of shares held by Canva shareholders in Canva were the same as the ownership percentage and rights of shares they hold in New Canva. No monetary consideration was required for the exchange of Canva shares for New Canva shares.
- The rights attached to each New Canva share are equivalent to those attached to each cancelled Canva share, with the relative value of each New Canva share being identical to each cancelled Canva share.
- The outstanding shares of Merger Sub held by New Canva were, by operation of the DGCL, converted into shares of Canva, resulting in Canva surviving the Merger as a wholly owned subsidiary of New Canva.
- The New Canva shares held by Canva immediately prior to the Merger were surrendered.

44. The Merger was completed at the Effective Time (Merger Closing Date), and Canva became a wholly owned subsidiary of New Canva.

45. At the Effective Time, pursuant to the Merger Agreement, Canva transferred to New Canva, and New Canva assumed all rights and agreed to perform all obligations of Canva with respect to, Canva's stock options and restricted stock units (RSUs). The assumption of equity plans, equity awards and agreements was effected pursuant to the Merger Agreement and board actions by Canva and New Canva boards.

46. Under section 10 of the Merger Agreement, existing holders of stock options and RSUs in Canva were issued corresponding New Canva stock options and RSUs, which mirrored the terms and economic conditions of the existing Canva stock plans.

#### **Step 4: Conversion to a Delaware limited liability company**

47. On the day after the Merger Closing Date (US EST), Canva converted to a Delaware limited liability company (Canva LLC), carried out in accordance with section 18-214 of the *Delaware Limited Liability Company Act* (DLLCA) and section 266 of the DGCL (conversion). The conversion became effective on 13 February 2025 (AEDT and US EST), being the date on which Canva filed the certificate of conversion (executed in accordance with the DGCL) with the Delaware Secretary of State.

48. Under Delaware law:

- Canva LLC's existence post-conversion will be deemed to have commenced on 28 June 2012, the original incorporation date of Canva.
- Canva (prior to the conversion) and Canva LLC (post conversion) are considered to be the same legal entity. The conversion did not constitute a dissolution of Canva. The conversion involved a change of corporate form only, with the entity retaining the same assets and liabilities both before and after the conversion.

49. In connection with the conversion:

- The shares of Canva were converted into membership interests in Canva LLC under section 18-214(i) of the DLLCA and section 266(g) of the DGCL.
- Canva LLC maintained a separate legal existence, distinct from its members, for US corporate law purposes.
- Under Delaware corporate law, step 4 required the consent of Canva shareholders holding a majority of voting power of Canva's share capital.

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**Step 5: Transfer of registration in Australia**

50. On 12 March 2025 (AEDT and US EST), Canva LLC registered as Canva Australia Holdings Pty. Ltd. (Canva Australia Holdings), a proprietary company limited by shares under Part 5B.1 of the *Corporations Act 2001*, transferring its registration from the US to Australia.

**Step 6: US 'check-the-box' election**

51. A US 'check the box' election was made in respect of Canva Australia Holdings by filing US Internal Revenue Service Form 8832. The election classified Canva Australia Holdings as a 'disregarded entity' for US Federal income tax purposes, effective from the time Canva LLC's registration was transferred to Australia.

**Other matters**

52. You are not a 'significant stakeholder' or 'common stakeholder' for the arrangement within the meaning of those terms in section 124-783.

53. Just before the Effective Time:

- Canva had more than 300 members and did not have a concentrated ownership of the nature described in section 124-810 and
- you, Canva and New Canva were not all members of the same linked group as defined in section 170-260.

54. Other than New Canva stock options issued to you in exchange for your Canva stock options, no equities were issued and no member of the Canva group owes new debt under the arrangement to an entity that is not a member of the group, in relation to the issuing of the New Canva stock options for the purposes of paragraph 124-780(3)(f).

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**Commissioner of Taxation**

28 May 2025

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Status: **not legally binding**

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## Appendix – Explanation

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**①** *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.*

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### Stock options

55. The object of section 83A-130 is to allow an ESS interest to continue being taxed under Division 83A, where either:

- an arrangement (takeover) is entered into that is intended to result in a company (the old company) becoming a 100% subsidiary of another company, or
- there is a change in the ownership of an old company and, as a result, ESS interests in the old company can reasonably be regarded as having been replaced, in whole or part, by ESS interests in one or more other companies.

56. The Restructure satisfies the requirements of section 83A-130 in relation to your Canva stock options because:

- the Restructure is a 'takeover' because it resulted in Canva becoming a 100% subsidiary of another company, New Canva (subparagraph 83A-130(1)(a)(i))
- just before the Restructure, you held ESS interests in Canva in the form of Canva stock options (the old interests) that you acquired under an employee share scheme (paragraph 83A-130(1)(b))
- as a result of the arrangement, you stopped holding the old interests (paragraph 83A-130(2)(a))
- you acquired ESS interests in the form of New Canva stock options (the new interests) in connection with the Restructure (subsection 83A-130(2))
- the new interests can reasonably be regarded as matching any of the old interests, as they have the same terms as the old interests (paragraph 83A-130(2)(b))
- the new interests relate to ordinary shares in New Canva (subsection 83A-130(4))
- you were employed by New Canva, or a subsidiary of New Canva, at the time you acquired the new interests (paragraph 83A-130(9)(a)), and
- at the time you acquired the new interests, you did not hold a legal or beneficial interest in more than 10% of New Canva shares; and you are not in a position to cast, or control the casting of more than 10% of the

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maximum number of votes that might be cast at a general meeting of New Canva (paragraph 83A-130(9)(b)).

57. Accordingly, for the purposes of Division 83A, the New Canva stock options you acquired in connection with the Restructure are treated as a continuation of your Canva stock options that you previously held.

#### **Availability of scrip for scrip roll-over relief for residents**

58. A scrip for scrip roll-over under Subdivision 124-M enables an entity to disregard a capital gain from a share, option, right or similar interest that is disposed of if it receives a replacement interest in exchange. It also provides special rules for calculating the cost base of the replacement interest.

59. Subdivision 124-M contains a number of conditions for, and exceptions to, an interest holder being eligible 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 an option, right or similar interest issued by a company that gives the holder an entitlement to acquire a share in that company for a similar interest in another company (subparagraph 124-780(1)(a)(ii))
- the exchange is in consequence of a single arrangement that satisfies subsection 124-780(2) or 124-780(2A)
- the conditions for the roll-over in subsection 124-780(3) are satisfied
- further conditions in subsections 124-780(4) and 124-780(5), if applicable, are satisfied, and
- exceptions for the scrip for scrip roll-over in section 124-795 are not applicable.

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

#### **Temporary residents**

61. If you were a temporary resident within the meaning of subsection 995-1(1) immediately before and at the time of the Restructure, any capital gain or capital loss you made from CGT event C2 happening to your Canva stock option is disregarded (subsection 768-915(1)).

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## References

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### *Legislative references:*

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  - ITAA 1997 Div 83A
  - ITAA 1997 83A-33
  - ITAA 1997 83A-33(5)(b)
  - ITAA 1997 83A-130
  - ITAA 1997 83A-130(1)
  - ITAA 1997 83A-130(1)(a)(i)
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  - ITAA 1997 83A-130(2)
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  - ITAA 1997 124-780
  - ITAA 1997 124-780(1)(a)(ii)
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  - ITAA 1997 124-780(2A)
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  - ITAA 1997 124-795(2)(a)
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  - ITAA 1997 170-260
  - ITAA 1997 Div 134
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  - ITAA 1997 768-915(1)
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  - ITAA 1997 995-1(1)
  - Corporations Act 2001 Pt 5B.1
  - Delaware General Corporation Law 251(g)
  - Delaware General Corporation Law 266
  - Delaware General Corporation Law 266(g)
  - Delaware Limited Liability Company Act 18-214
  - Delaware Limited Liability Company Act 18-214(i)
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### ATO references

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