


# ***CR 2025/64 - VGW Holdings Limited - scrip for scrip roll-over***

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## Class Ruling

# VGW Holdings Limited – scrip for scrip roll-over

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### **📌 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 VGW Holdings Limited (VGW) who transferred their shares to Ocean BidCo Limited (BidCo) on 20 August 2025 (Implementation Date).
2. Details of this scheme are set out in paragraphs 25 to 44 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:
  - acquired your shares in VGW on or after 20 September 1985
  - transferred your shares in VGW pursuant to the scheme of arrangement approved by the Federal Court of Australia on 5 August 2025, with an Implementation Date of 20 August 2025
  - held your shares in VGW on capital account, and not as revenue assets or trading stock
  - were, when and just before you transferred your shares in VGW, a:
    - ‘resident’ of Australia as defined by subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
    - ‘resident trust for CGT purposes’ as defined by subsection 995-1(1), or

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- ‘non-resident’ of Australia as defined by subsection 6(1) of the ITAA 1936 who does not carry on, and has not carried on, a business at or through a permanent establishment in Australia
- were not, when and just before you transferred your shares in VGW, a ‘temporary resident’ as defined by subsection 995-1(1)
- did not acquire your shares in VGW pursuant to an employee share scheme to which Subdivision 83A-C applies, where your deferred taxing point occurred on the Implementation Date
- are not a life insurance company as defined by subsection 995-1(1), and
- were not subject to the investment manager regime in Subdivision 842-I in relation to your VGW Shares.

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 44 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

6. A person to whom this Ruling applies is referred to in this Ruling as an Eligible Shareholder.

### **When this Ruling applies**

7. This Ruling applies for the income year ending 30 June 2026.

## **Ruling**

### **CGT event A1**

8. CGT event A1 happened when you (as an Eligible Shareholder) disposed of each of your VGW shares to BidCo under the scheme described in this Ruling.

9. The time of CGT event A1 was the Implementation Date.

10. The capital proceeds for each CGT event A1 will be:

- the market value of the BidCo share (Scrip Consideration) you receive at the time the CGT event A1 happens
- otherwise, \$4.60 (Cash Consideration).

11. If the capital proceeds from the disposal of your VGW share were more than its cost base, you made a capital gain from the CGT event A1 happening equal to the difference between the capital proceeds and the cost base.

12. If the capital proceeds from the disposal of your VGW share were less than its reduced cost base, you made a capital loss from the CGT event A1 happening equal to the difference between the capital proceeds and the reduced cost base.

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**Scrip for scrip roll-over**

13. Subject to the qualifications in paragraphs 14 to 16 of this Ruling, you may choose to obtain scrip for scrip roll-over in accordance with Subdivision 124-M if you received Scrip Consideration for your VGW share and made a capital gain from your disposal of that share.
14. You cannot choose scrip for scrip roll-over if you were a foreign resident just before the Implementation Date.
15. You cannot choose scrip for scrip roll-over if any capital gain you make from your disposal of your VGW share would be disregarded, except because of the roll-over.
16. You are a significant stakeholder or a common stakeholder as defined in section 124-783, and therefore section 124-782 applies to you. As a result, you must jointly choose to obtain scrip for scrip roll-over with BidCo in relation to each VGW share you dispose of for Scrip Consideration, and you must notify BidCo in writing of the cost base of that VGW share worked out just before its disposal.

**Consequences of choosing scrip for scrip roll-over*****Capital gain is disregarded***

17. If you choose scrip for scrip roll-over for a VGW share, the capital gain you made from CGT event A1 happening on the exchange of that VGW share for a BidCo share is disregarded.

**Cost base and reduced cost base of BidCo shares**

18. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement BidCo share you received is the cost base and reduced cost base of the VGW share for which it was exchanged and for which you obtained the roll-over.

**Acquisition date of BidCo shares**

19. For the purposes of determining your eligibility to make a discount capital gain from any later disposal of your BidCo shares, where scrip for scrip roll-over was available and you chose it for a VGW share, you are taken to have acquired your BidCo share when you acquired the VGW share you exchanged for the BidCo share.

**Consequences of not choosing, or being unable to choose, scrip for scrip roll-over*****Capital gain is not disregarded***

20. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of each of your VGW shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened.
21. If you are a foreign resident for the purposes of the ITAA 1936 or *Income Tax Assessment Act 1997*, you disregard any capital gain or capital loss made as a result of CGT event A1 happening if your VGW share was not taxable Australian property as defined in section 855-15.

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22. If you made a capital gain where you do not choose, or cannot choose, scrip for scrip roll-over, you can apply the CGT discount provided that you acquired your VGW share at least 12 months before the Implementation Date (the date you acquired your VGW share and the Implementation Date are not included in that 12-month period) and the other conditions of Subdivision 115-A are met.

#### **Cost base and reduced cost base of BidCo shares**

23. If you do not choose, or cannot choose, scrip for scrip roll-over, the first element of the cost base and reduced cost base of each BidCo share you received is the market value of the VGW share that you exchanged for it.

#### **Acquisition date of BidCo shares**

24. If you do not choose, or cannot choose, scrip for scrip roll-over, you are taken to have acquired each of your BidCo shares on the Implementation Date.

### **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.

#### **VGW Holdings Limited**

26. VGW is an unlisted public company registered with the Australian Securities and Investments Commission.

27. VGW is a resident of Australia as defined in subsection 6(1) of the ITAA 1936.

28. VGW is the head company of a tax consolidated group in Australia.

29. As at 2 June 2025, VGW had 635,062,365 ordinary shares on issue owned by 995 shareholders. There were no other share classes on issue.

30. Laurence Escalante, and other Eligible Shareholders who were associates of Laurence Escalante as defined in section 318 of the ITAA 1936, held a significant stake in VGW just before the Implementation Date.

#### **Ocean BidCo Limited**

31. BidCo is an unlisted special purpose company incorporated in Guernsey.

32. BidCo is a resident of Australia as defined in subsection 6(1) of the ITAA 1936.

33. BidCo was incorporated with only one ordinary share on issue which was owned by Laurence Escalante. It continued to have only one ordinary share on issue up until the Implementation Date.

34. BidCo did not make a choice in accordance with subsection 124-795(4) that an Eligible Shareholder could not obtain the scrip for scrip roll-over.

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### **Scheme of arrangement**

35. On 2 June 2025, VGW and BidCo entered into a Scheme Implementation Deed.
36. On 5 August 2025, the Federal Court of Australia approved the proposed scheme of arrangement.
37. On the Implementation Date:
- all VGW shares were transferred to BidCo
  - as consideration for the transfer of each VGW ordinary share, each Eligible Shareholder received either
    - one BidCo share (Scrip Consideration), or
    - \$4.60 (Cash Consideration)
  - Eligible Shareholders who were entitled to choose Scrip Consideration could choose either Scrip Consideration or Cash Consideration for each individual VGW share, and they were not entitled to choose partial Scrip Consideration and partial Cash Consideration for a single VGW share
  - some Eligible Shareholders received solely Scrip Consideration, solely Cash Consideration, or a combination of both for their parcel of VGW shares
  - Eligible Shareholders collectively holding 80% or more of VGW shares on issue before the Scheme, and holding 80% or more of BidCo shares after the Scheme, have elected for Scrip Consideration for some or all of their VGW shares.
38. This resulted in Laurence Escalante, and other Eligible Shareholders who were associates of Laurence Escalante as defined in section 318 of the ITAA 1936, holding a significant stake in BidCo.
39. In response to the family office of Laurence Escalante proposing this scheme, VGW's board put protocols and procedures in place to ensure they acted in the best interests of VGW shareholders. This included the appointment of an independent non-executive director and establishment of an Independent Board Committee (Committee) that did not include Laurence Escalante.
40. The Committee received legal and financial advice independent of Laurence Escalante and BidCo throughout the negotiation process for the terms of the scheme of arrangement. The negotiation process resulted in an increase to the Cash Consideration payable under the scheme.

### **Funding and dividends**

41. Lance East Finance Pty Ltd (FinCo) is an Australian-resident company as defined by subsection 6(1) of the ITAA 1936. FinCo is wholly owned by BidCo.
42. Payment of the Cash Consideration by BidCo was funded by a loan from FinCo.
43. In order to make the loan to BidCo, FinCo obtained a mix of financing comprising of:
- a secured loan from third-party lenders for up to US\$310 million, and

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- an unsecured loan provided by VGW for up to US\$586 million less an amount equal to the aggregate of all dividends declared and paid by VGW between 2 June 2025 and 5 August 2025.

44. Between the date of the Scheme Implementation Deed (2 June 2025) and the Implementation Date, VGW paid the following dividends:

- an interim dividend of \$0.30 per VGW share held as at 3 June 2025, which was paid on 13 June 2025, and
- a special dividend of \$0.15 per VGW share held as at 25 July 2025, which was paid on 7 August 2025.

These dividends were not conditional on the scheme described in this Ruling being implemented and were at the discretion of VGW's board.

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**Commissioner of Taxation**

24 September 2025

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## References

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*Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1936 318
  - ITAA 1997 Subdiv 83A-C
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 Subdiv 124-M
  - ITAA 1997 124-782
  - ITAA 1997 124-783
  - ITAA 1997 124-795(4)
  - ITAA 1997 Div 230
  - ITAA 1997 Subdiv 842-I
  - ITAA 1997 855-15
  - ITAA 1997 995-1(1)
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ATO references

NO: 1-168KWV8B  
ISSN: 2205-5517  
BSL: PW  
ATOlaw topic: Capital gains tax ~~ CGT events ~~ A1 - disposal of a CGT asset  
Capital gains tax ~~ Rollovers ~~ Scrip for scrip

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