


***TD 2005/D55 - Income tax: capital gains tax: scrip for scrip roll-over: is the reference to a roll-over in paragraph 124-795(2)(a) of the Income Tax Assessment Act 1997 only to a replacement asset roll-over listed in section 112-115 of the Income Tax Assessment Act 1997 or a same asset roll-over listed in section 112-150 of the Income Tax Assessment Act 1997?***

 This cover sheet is provided for information only. It does not form part of *TD 2005/D55 - Income tax: capital gains tax: scrip for scrip roll-over: is the reference to a roll-over in paragraph 124-795(2)(a) of the Income Tax Assessment Act 1997 only to a replacement asset roll-over listed in section 112-115 of the Income Tax Assessment Act 1997 or a same asset roll-over listed in section 112-150 of the Income Tax Assessment Act 1997?*

This document has been finalised by TD 2006/9.



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## Draft Taxation Determination

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Income tax: capital gains tax: scrip for scrip roll-over: is the reference to a roll-over in paragraph 124-795(2)(a) of the *Income Tax Assessment Act 1997* only to a replacement asset roll-over listed in section 112-115 of the *Income Tax Assessment Act 1997* or a same asset roll-over listed in section 112-150 of the *Income Tax Assessment Act 1997*?

### **Preamble**

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. 'Roll-over' in paragraph 124-795(2)(a) of the *Income Tax Assessment Act 1997* (ITAA 1997) does not refer only to a replacement asset roll-over listed in section 112-115 of the ITAA 1997 or a same asset roll-over listed in section 112-150 of the ITAA 1997. It can also refer to a provision that operates in a similar manner to defer tax recognition by disregarding a capital gain or loss and providing for a cost base/reduced cost base transfer.

### **Explanation**

2. Scrip for scrip roll-over is not generally available if any capital gain a taxpayer might make from a replacement interest would be disregarded: paragraph 124-795(2)(a) of the ITAA 1997. The reason for this is that any capital gain deferred on the scrip for scrip roll-over would never be captured on a later realisation of the replacement interest. Thus, roll-over would not be available if a replacement interest acquired under a scrip for scrip arrangement were trading stock or a share in a PDF (pooled development fund). Subsequent capital gains from these assets would be disregarded under sections 118-25 and 118-13 of the ITAA 1997 respectively.

3. There is an exception, however, if a roll-over is the reason that a capital gain that might be made on a replacement interest is disregarded. In such a case, the taxing point would only be deferred.

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4. 'Roll-over' is not a defined term.
5. The capital gains tax (CGT) provisions refer specifically to same-asset and replacement-asset rollovers as defined in subsection 995-1(1) of the ITAA 1997. Broadly, these roll-overs enable taxpayers to disregard gains or losses made in relation to CGT assets until the happening of a later CGT event. They also provide for the cost base and reduced cost base of the original asset to be transferred to a different taxpayer (same-asset roll-over) or to another asset (replacement-asset rollover).
6. However, in the statutory context in which the expression 'roll-over' is used in paragraph 124-795(2)(a) of the ITAA 1997, the Commissioner takes the view that it does not only refer to the roll-overs that are listed in the tables in section 112-115 and 112-150 of the ITAA 1997. In the Commissioner's view, it includes any provision that has the effect of deferring, but not eliminating, tax recognition of a capital gain and providing for a cost base/reduced cost base transfer.
7. For example, Subdivision 130-C of the ITAA 1997 operates as a form of roll-over when a convertible interest is converted. Any capital gain or loss from the conversion is disregarded under subsection 130-60(3) of the ITAA 1997. Subsection 130-60(1) of the ITAA 1997 ensures that the cost base/reduced cost base of the converting interest is included in the cost base/reduced cost base of the shares or units acquired as a result of the conversion. Similarly, Division 128 of the ITAA 1997 provides a form of roll-over in respect of the assets owned by an individual when they die. Other provisions operate to confer a roll-over when options or rights are exercised.
8. If a narrow interpretation of the term roll-over is adopted, it would mean that scrip for scrip roll-over would not be available for taxpayers who exchange options in one company for options in another company (because a capital gain from the exercise of the option would be disregarded). This is clearly not consistent with the policy intent of Subdivision 124-M of the ITAA 1997 to apply to options (see paragraph 2.17 of the Explanatory Memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999).

## **Example**

9. *Lisa acquired 1,000 options to acquire shares in an Australian listed public company in July 2003.*
10. *In 2004, this company was acquired by another Australian public company. Under an arrangement which satisfied the conditions for roll-over under Subdivision 124-M, the options Lisa held in the original company were exchanged for options to acquire shares in the acquiring company.*
11. *Any capital gain Lisa might make from exercising her options to acquire shares in the acquiring company would be disregarded: subsection 134-1(4) of the ITAA 1997. Despite this, the Commissioner takes the view that Lisa is entitled to choose scrip for scrip roll-over relief because the capital gain is disregarded under a roll-over.*

## **Date of effect**

12. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

### Your comments

13. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date. (Note: The Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

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### Commissioner of Taxation

21 December 2005

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 92/20

*Subject references:*

- capital gain
- capital gains tax
- CGT event
- convertible interests
- scrip for scrip roll-over

*Legislative references:*

- TAA 1953 Pt IVA
- ITAA 1997 112-115
- ITAA 1997 112-150

- ITAA 1997 118-13
- ITAA 1997 118-25
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-795(2)(a)
- ITAA 1997 Div 128
- ITAA 1997 Subdiv 130-C
- ITAA 1997 130-60(1)
- ITAA 1997 130-60(3)
- ITAA 1997 134-1(4)
- ITAA 1997 995-1(1)

*Other references:*

- Explanatory Memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999

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ATO references

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