



Class Ruling

Income tax: scrip for scrip: exchange of shares in Home Building Society Ltd for shares in Bank of Queensland Ltd

| | |
|-------------------------------------|------------|
| Contents | Para |
| LEGALLY BINDING SECTION: | |
| What this Ruling is about | 1 |
| Date of effect | 7 |
| Scheme | 12 |
| Ruling | 23 |
| NOT LEGALLY BINDING SECTION: | |
| Appendix 1: | |
| <i>Explanation</i> | 36 |
| Appendix 2: | |
| <i>Detailed contents list</i> | 111 |

📌 This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in paragraph 2 of this Ruling apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 109-10 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997; and
- Subdivision 130-A of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are the shareholders of Home Building Society Limited (Home) who:
- (a) were residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at the time the Scheme is undertaken;
 - (b) participated in the Scheme of arrangement approved by Home shareholders and the courts (the Scheme) as described further in paragraphs 16 and 17 of this Ruling;
 - (c) held their Home shares on capital account;
 - (d) disposed of their Home shares to Bank of Queensland Limited (BOQ) in exchange for BOQ ordinary shares and cash; and
 - (e) were not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions in Subdivision 124-M.

Qualifications

4. The class of entities defined in this Ruling may rely on its contents provided the Scheme actually carried out is carried out in accordance with the Scheme described in paragraphs 12 to 22 of this Ruling.

5. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

6. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Attorney General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

Date of effect

7. This Ruling applies from 31 August 2007 to 30 June 2008. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

8. The Ruling does 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 Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The following description of the Scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- application for Class Ruling dated 16 October 2007 from Blake Dawson;
- Merger Implementation Deed dated 31 August 2007;
- Home Scheme Booklet dated 25 October 2007; and
- correspondence and emails in relation to the application.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

13. Home and BOQ are public companies. BOQ is listed on the Australian Securities Exchange (ASX). Home was listed on the ASX until the close of trading on 24 December 2007. Both companies are residents of Australia as defined in subsection 6(1) of the ITAA 1936. BOQ has more than 300 members. Home had more than 300 members until all of the ordinary class Home shares were transferred to BOQ on 18 December 2007.

14. Home was listed on the ASX on 1 March 2002 and there were no shares on issue prior to listing. Accordingly, all Home shareholders acquired their shares after 20 September 1985.

15. Home had two classes of shares on issue:

- A Class; and
- Ordinary Class.

16. On 31 August 2007, Home and BOQ signed a Merger Implementation Agreement (MIA) under which BOQ proposed to acquire Home by way of a Court approved Scheme under section 411 of the *Corporations Act 2001*.

17. The Scheme has received Home ordinary shareholder, regulatory and Court approval. All of the ordinary class Home shares held by Home shareholders were transferred to BOQ on 18 December 2007 (the Implementation Date) when the Scheme was implemented. This resulted in Home becoming a wholly-owned subsidiary of BOQ.

18. In consideration for the transfer of ordinary class Home shares to BOQ, Home shareholders were entitled to receive 0.844 new BOQ shares and \$2.80 in cash for each Home share they held (the Scheme Consideration). The number of new BOQ shares to which a Home shareholder was entitled were rounded up or down to the nearest whole number of BOQ shares.

19. Having received shareholder approval, A Class Home shares were converted to fully paid, ordinary class Home shares on a one for one basis on 7 December 2007. The A Class Home shareholders participated in the Scheme on the same terms as other Home shareholders, except that:

- they were not eligible to vote at the meeting of Home shareholders in relation to the Scheme; and
- on 18 December 2007, they received \$15.19 in capital proceeds (see paragraph 44 of this Ruling for more information) for transferring their Home shares to BOQ.

Foreign shareholders

20. Home shareholders resident in countries other than Australia and New Zealand were not entitled to receive BOQ shares as consideration for the disposal of their Home shares. The BOQ shares that would otherwise have been issued to them were instead issued to a nominee. The nominee will sell the BOQ shares on the ASX. The net sale proceeds will be remitted to the relevant foreign shareholders.

Share sale facility for small parcel participants

21. A share sale facility was established pursuant to which small parcel participants (broadly, those Home shareholders with a registered address in Australia or New Zealand who held 355 shares or less in Home) elected to sell the new BOQ shares that they would otherwise have received under the Scheme on substantially the same terms as all other Home shareholders, via a share sale facility. Small parcel participants were not required to hold an account with a broker or nominee and their participation in the share sale facility was entirely voluntary. The share sale facility is not part of the Scheme that is the subject of this Ruling.

Options in Home

22. BOQ has also made an offer to each Home option-holder to acquire their options in return for a cash payment. This offer is not part of the Scheme that is the subject of this Ruling.

Ruling

Disposal of Home ordinary class shares

23. CGT event A1 happened when a Home shareholder disposed of their ordinary class Home shares under the Scheme (subsection 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

24. The time of the CGT event A1 is the Implementation Date under the Scheme (subsection 104-10(3)).

25. A Home shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an ordinary class Home share exceeds its cost base. A Home shareholder will make a capital loss if the capital proceeds are less than the Home share's reduced cost base (subsection 104-10(4)).

26. The capital proceeds are the total consideration received for each Home share including the cash consideration of \$2.80 per share plus the market value of 0.844 of a BOQ share at the Implementation Date (subsection 116-20(1)). The market value of one BOQ share may be determined as the closing price of a BOQ share on the Implementation Date.

27. The issue of a fraction of a BOQ share to a Home shareholder to round up their shareholding to the nearest whole number following the conversion is bonus equity as defined in subsection 130-20(1). No part of the bonus equity is a dividend.

Availability of scrip for scrip roll-over

28. A Home shareholder is eligible to choose scrip for scrip roll-over to the extent that they receive BOQ shares in exchange for their Home shares under the Scheme if:

- apart from the roll-over under Subdivision 124-M, they will make a capital gain when CGT event A1 happens to their Home shares (paragraph 124-780(3)(b));
- they cannot disregard (except because of a roll-over) any capital gain they might make from a replacement BOQ share (paragraph 124-795(2)(a)); and
- all other relevant requirements of Subdivision 124-M are satisfied.

Consequences of scrip for scrip roll-over for Home shareholders

29. A Home shareholder who received BOQ shares and cash for the disposal of their Home shares and chose roll-over may disregard the capital gain from the disposal to the extent that the shareholder received replacement BOQ shares for the disposal of their Home shares. The capital gain is not disregarded to the extent that the shareholder received cash for the disposal of their Home shares (subsection 124-790(1)).

Cost base of replacement BOQ shares

30. If a Home shareholder chose roll-over, the first element of the cost base of the replacement BOQ share is worked out by attributing, on a reasonable basis, the cost base of the Home share disposed of. However, the cost base of the Home share must first be reduced by so much of it that relates to the cash proceeds (subsections 124-785(2) and (3)).

31. The first element of the reduced cost base of the replacement BOQ share is calculated in the same manner (subsection 124-785(4)).

32. In working out the amount of the cost base of a Home share that is reasonably attributable to the cash consideration, the Commissioner accepts the following method:

$$\text{Cost Base of Home shares} \times \frac{\text{Value of cash consideration}}{\text{Value of share consideration plus cash consideration (i.e. the total consideration)}}$$

where:

- (1) share consideration means 0.844 BOQ share for each Home share held as provided in paragraph 18 of this Ruling. The market value of one BOQ share may be determined as the closing share price on the ASX of a BOQ share on the Implementation Date. Refer to paragraph 44 of this Ruling under 'Capital Proceeds'; and
- (2) cash consideration means \$2.80 per Home share.

Acquisition date of BOQ shares

33. The acquisition date of BOQ shares is the date that they were issued to each Home shareholder (that is the Implementation Date) (section 109-10).

34. For Home shareholders who choose scrip for scrip roll-over, the acquisition date of their BOQ shares for CGT discount purposes is the date they acquired the corresponding Home shares that are disposed of under the Scheme (item 2 of the table in subsection 115-30(1)).

Discount capital gain

35. A Home shareholder who, apart from the roll-over, would make a capital gain is eligible to treat the capital gain as a discount capital gain providing they held the Home share for at least 12 months before the disposal and the other requirements of Subdivision 115-A are satisfied (section 115-25).

Commissioner of Taxation

5 March 2008

Appendix 1 – Explanation

❶ *This Appendix 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.*

Disposal of Home ordinary class shares

36. A Home shareholder's assessable income includes their net capital gain (if any) for the income year (section 102-5). A net capital gain is the total of their capital gains for the income year reduced by certain capital losses they have made (subsection 100-10(1)).

37. A capital gain or capital loss is made if a CGT event happens (section 100-20). CGT event A1 happens if there is a change in the ownership of a CGT asset from one entity to another (section 104-10). A CGT asset includes shares in a company (section 108-5).

38. CGT event A1 happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

39. The time when CGT event A1 happens determines the income year in which any capital gain or capital loss is made and whether the CGT discount applies to any capital gain.

40. As it was a merger effected by Court approval, the Scheme did not involve a disposal of shares under a contract. When a Home shareholder disposed of a Home ordinary class share to BOQ under the Scheme, CGT event A1 happened when the change of ownership occurred. This occurred when the Home shares were transferred to BOQ on the Implementation Date.

41. A capital gain is made if the capital proceeds from the disposal are more than the Home share's cost base. A capital loss is made if those capital proceeds are less than the Home share's reduced cost base (section 104-10(4)).

42. Section 116-20 provides that the capital proceeds from a CGT event is the total of:

- the money received; and
- the market value of any property received or entitled to be received (worked out as at the time of the event).

43. The capital proceeds for Home shareholders is any cash consideration plus any share consideration received in respect of the disposal of Home shares.

44. The capital proceeds Home shareholders received for each Home share was \$17.99, which comprised of:

- \$2.80 in cash, plus
- \$15.19, which was the market value of 0.844 of a BOQ share on 18 December 2007 (the Implementation Date).

45. The Commissioner will accept as the market value of the BOQ shares on the Implementation Date, the closing share price of a BOQ share on the date that the Home shareholders dispose of their Home shares provided that the closing price does not vary by more than 5% from either the minimum or maximum traded price over the course of that day. As the closing price did not vary by more than 5%, the market value of a BOQ share on the Implementation Date is accepted as \$18.00, the closing price of a BOQ share on the Implementation Date.

Availability of scrip for scrip roll-over for Home shareholder

46. Scrip for scrip roll-over enables a shareholder to disregard all or part of a capital gain they make from a share that is disposed of as part of a corporate restructure, including a merger, if the shareholder receives a replacement share in exchange.

47. The capital gain is disregarded completely if the only capital proceeds the shareholder receives are replacement shares. A capital gain is only partially disregarded if, in addition to shares, there is cash consideration as part of the capital proceeds.

Requirements for scrip for scrip roll-over

48. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a Home shareholder to choose scrip for scrip roll-over:

Shares are exchanged for shares in another company

49. Paragraph 124-780(1)(a) requires an entity (the original interest holder) to exchange a share for a share in another company.

50. This requirement was satisfied by those Home shareholders who received shares in BOQ as consideration for the disposal of their Home shares under the Scheme. As Home shareholders received BOQ shares plus cash as consideration for disposal of their Home shares, roll-over is available to the extent that the Home shareholders received BOQ shares for their Home shares.

The exchange occurs as part of a single arrangement

51. Paragraph 124-780(1)(b) requires that shares in an entity be exchanged in consequence of a single arrangement.

52. In the context of the scrip for scrip roll-over provisions, the merger of Home and BOQ under the Scheme is considered to be a single arrangement. The single arrangement must also satisfy the following conditions.

(a) 80% ownership

53. Paragraph 124-780(2)(a) requires that shares in an entity be exchanged in a single arrangement that results in another entity becoming the owner of 80% or more of the voting shares in the original entity.

54. This requirement was satisfied as on completion of the Scheme, BOQ became the owner of all the fully paid shares in Home. Accordingly, BOQ is the only entity with voting shares in Home. All the ordinary class Home shares satisfy the definition of a 'voting share' in subsection 995-1(1).

(b) All voting share owners participate

55. Paragraph 124-780(2)(b) requires that the exchange of shares is in consequence of a single arrangement in which at least all owners of voting shares in the original entity (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate.

56. This requirement is satisfied as all the owners of voting shares in Home were entitled to participate in the Scheme, as approved by Home shareholders.

(c) Participation is on substantially the same terms

57. Paragraph 124-780(2)(c) requires that the exchange is in consequence of a single arrangement in which participation is available on substantially the same terms for all of the owners of interests of a particular type in the original entity.

58. The issued share capital of the original entity may consist of different classes of shares with different rights attached to the shares in each class. Each class of share will be regarded as a different type of interest for the purposes of paragraph 124-780(2)(c) if there is sufficient difference in the rights attaching to each class of share. If each shareholder within each class of share is able to participate in the Scheme on substantially the same terms, the requirement in paragraph 124-780(2)(c) will be satisfied.

59. The issued share capital of Home consists of more than one class of shares. There are ordinary class Home shares and A class Home shares. Both classes of shares have different voting and dividend rights and obligations in relation to transfer. The difference in the rights attaching to each class of shares is sufficient for each class to be regarded as a different type of interest for the purposes of paragraph 124-780(2)(c). Therefore, while the offer made to A class Home shareholders and ordinary class Home shareholders differs, the Scheme satisfies the requirement in paragraph 124-780(2)(c) as the offer to Home shareholders within each class of share is on substantially the same terms.

60. Note 2 to subsection 124-780(2) states that participation will be on substantially the same terms even if matters such as those referred to in subsections 619(2) and (3) of the *Corporations Act 2001* affect the capital proceeds that each participant can receive. Subsection 619(3) of the *Corporations Act 2001* deals with nominee arrangements for foreign shareholders.

61. Therefore, paragraph 124-780(2)(c) will be met to the extent that the parties rely on subsection 619(3) of the *Corporations Act 2001* in relation to foreign shareholders. The issue of BOQ shares to a nominee for sale on behalf of ineligible foreign Home shareholders will not prevent the arrangement from being on substantially the same terms for all owners of Home shares.

62. The share sale facility (which was limited to Australian and New Zealand shareholders who hold up to 355 Home shares), although available at the same time as the Scheme that is the subject of this Ruling, is a separate transaction from the Scheme and does not prevent the arrangement being on substantially the same terms for all shareholders.

Conditions for roll-over are satisfied

63. Paragraph 124-780(1)(c) requires that the conditions for roll-over outlined in subsection 124-780(3) are met. These conditions must be met in relation to each Home share for which scrip for scrip roll-over is chosen.

64. The conditions in subsection 124-780(3) are as follows.

(a) The Home shares are post-CGT shares

65. Paragraph 124-780(3)(a) requires that the original interest holder acquired their original interests on or after 20 September 1985.

66. As Home was listed on the ASX on 1 March 2002 and there were no shares on issue prior to listing, all of the issued shares in Home were acquired on or after 20 September 1985. Therefore, this condition is satisfied.

(b) A Home shareholder would otherwise make a capital gain

67. Paragraph 124-780(3)(b) requires that, apart from the roll-over, the original interest holder would make a capital gain from a CGT event happening in relation to its original interest.

68. Whether a Home shareholder would, apart from the roll-over, make a capital gain from the disposal of any of their shares to BOQ is a question of fact that is dependent on the specific circumstances of each shareholder – in particular, on the cost base of each Home share and the value of the capital proceeds received. Therefore, whether this condition is met will depend on the individual circumstances of the Home shareholder.

(c) Home shareholders receive a replacement interest in the group acquiring their original share

69. Paragraph 124-780(3)(c) requires that the replacement interest is in the acquiring entity or the ultimate holding company of the wholly owned group which includes the acquiring entity.

70. This requirement was satisfied as the Home shareholders received shares in BOQ, the acquiring entity under the Scheme.

(d) A Home Shareholder must choose to obtain scrip for scrip roll-over

71. Paragraph 124-780(3)(d) requires that the original interest holder chooses the roll-over, or if section 124-782 applies, the original interest holder and the replacement entity jointly choose to obtain the roll-over.

72. Section 124-782 has no application in the Scheme since there are no significant stakeholders or common stakeholders under the arrangement.

73. Subject to their eligibility (see paragraph 28 of this Ruling), whether a Home shareholder chose to obtain roll-over in relation to the disposal of a Home share is a question of fact to be determined for each Home shareholder.

74. The additional requirements in paragraphs 124-780(3)(d) and 124-780(3)(e) are not relevant to the Scheme because there is no significant stakeholder or common stakeholder (as defined in section 124-783) in Home at the time the Scheme is implemented.

Further conditions are not applicable

75. Subsection 124-780(4) provides that the additional requirements in subsection 124-780(5) must be satisfied if the original interest holder and the acquiring entity did not deal with each other at arm's length and:

- (a) neither the original entity (Home) nor the replacement entity (BOQ) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a)); or
- (b) the original interest holder, the original entity and the acquiring entity were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b)).

76. BOQ and Home shareholders are dealing with each other at arm's length. Therefore, the further conditions in subsection 124-780(4) are not relevant.

77. Even if any Home shareholders were considered not to be at arm's length, paragraph 124-780(4)(a) will not apply because both Home and BOQ have at least 300 members immediately before the arrangement started. Paragraph 124-780(4)(b) will not apply as Home shareholders, Home and BOQ were not members of the same linked group immediately before the arrangement started.

Exceptions to obtaining scrip for scrip roll-over are not applicable

78. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen. The exceptions in section 124-795 are as follows.

(a) Home shareholders are residents of Australia

79. Subsection 124-795(1) provides that roll-over is not available if, just before the disposal, the original interest holder is a foreign resident unless, just after the acquisition of the replacement interest, the replacement interest is not taxable Australian property.

80. The class of entities to whom this Ruling applies is limited to Home shareholders who are residents of Australia at the time of the Scheme. As a consequence, the exception in subsection 124-795(1) will not apply to limit this Ruling in that regard.

(b) A capital gain cannot (apart from the roll-over) be otherwise disregarded

81. Paragraph 124-795(2)(a) provides that the roll-over is not available if any capital gain the original interest holder might make from their replacement interest would be disregarded (except because of a roll-over).

82. Whether a capital gain arising from the disposal of a Home share is disregarded under another provision of the ITAA 1997 (for example, the Home shares are trading stock held by the Home shareholder) is a question of fact for each shareholder. Paragraph 3 and 28 of this Ruling limits the application of the Ruling in this regard.

(c) Acquiring entity is not a foreign resident

83. Paragraph 124-795(2)(b) provides that the roll-over is not available if the original interest holder and the acquiring entity are members of the same wholly owned group just before the original interest holder stops owning their original interest and the acquiring entity is a foreign resident.

84. This exception does not apply as the Home shareholders and BOQ were not members of the same wholly-owned group just before the Scheme was implemented. In addition, BOQ is not a foreign resident company.

(d) No roll-over is available under Division 122 or Subdivision 124-G

85. Subsection 124-795(3) provides that the roll-over is not available if a roll-over can be chosen under Division 122 or Subdivision 124-G.

86. This exception will not apply as the circumstances of the Scheme are such that a roll-over pursuant to Division 122 or Subdivision 124-G is not available.

Consequences of scrip for scrip roll-over

87. Scrip for Scrip roll-over enables a shareholder to disregard all or part of a capital gain from a share that is disposed of as part of a corporate restructure, including a merger, if the shareholder receives a replacement share in exchange.

88. If the only capital proceeds the shareholder receives are replacement shares, the capital gain is disregarded completely (subsection 124-785(1)). All of the cost base of the original shares can be allocated to the replacement shares (subsection 124-785(2)).

Consequences of roll-over where Home shares and cash are received as capital proceeds

89. If the capital proceeds paid to Home shareholders in respect of their Home shares consist of cash as well as BOQ shares, a shareholder is able to choose only partial roll-over. Roll-over will not be available to the extent that any capital gain is attributable to the \$2.80 cash (ineligible proceeds) paid per Home share (subsection 124-790(1)).

90. In calculating the capital gain attributable to their ineligible proceeds, a Home shareholder should deduct from the total proceeds a reasonable portion of the cost base of their Home shares (just before their disposal to BOQ) (subsection 124-790(2)).

91. In making a reasonable apportionment of the cost base of a Home share, it would be appropriate for a shareholder to consider the value of the ineligible proceeds, fixed at \$2.80, compared with the value of the BOQ shares on the date that CGT event A1 happens to their Home shares.

92. In working out the amount of the cost base of the Home share that is reasonably attributable to the cash consideration, the Commissioner accepts the following method:

$$\text{Cost Base of Home shares} \times \frac{\text{value of cash consideration}}{\text{value of share consideration plus cash consideration (that is the total consideration)}}$$

where:

- (1) share consideration means 0.844 BOQ share for each Home share held as provided in paragraph 18 of this Ruling. The market value of one BOQ share may be determined as the closing share price on the ASX of a BOQ share on the Implementation Date. Refer to paragraph 44 of this Ruling under 'Capital Proceeds'; and
- (2) cash consideration means \$2.80 per Home share.

93. The cost base of the Home shares, reduced by that portion that is taken into account in working out any capital gain in respect of the ineligible proceeds, will form the first element of the cost base of the replacement BOQ shares (subsections 124-785(2) and (3) and Subdivision 110-A).

94. The first element of the reduced cost base is calculated in a similar manner (subsection 124-785(4) and Subdivision 110-B).

95. The following example provides guidance for Home shareholders to work out their capital gains tax consequences if they choose roll-over in respect of the disposal of their shares to BOQ under the Scheme.

96. The example shows how to work out:

- a capital gain attributable to the cash they receive for their Home shares; and
- the first element of the cost base of their replacement BOQ shares.

97. Where a Home shareholder works out the first element of the cost base of their BOQ shares in accordance with the approach adopted in the following example, the Commissioner will accept that this represents a reasonable attribution of the cost base of each Home share. However, it is recognised that this approach may not be the only reasonable method.

Example of partial roll-over

98. *Adam acquires 1,000 ordinary class Home shares for \$4,000 in 2003. At the Implementation Date, Adam receives consideration of \$2,800 cash ($\$2.80 \times 1,000$) and 844 BOQ shares. The market value of a BOQ share at the Implementation Date is \$18.00.*

Adam chose scrip for scrip roll-over.

Calculation of capital gain attributable to the cash component of the consideration (ineligible proceeds)

The capital gain from the cash component of the consideration could be determined as follows:

| | | | |
|------------------------------------|---|---|---|
| <i>Cash proceeds</i> | = | <i>\$2,800</i> | |
| <i>Total consideration</i> | = | <i>share consideration + cash consideration</i> | |
| | | <i>= (844 × \$18) + \$2,800</i> | |
| | | <i>= \$17,992</i> | |
| <i>Cost base of cash component</i> | = | <i>cost base of Home shares</i> | <i>×</i> |
| | | <i>= \$4,000 × (\$2,800 / \$17,992)</i> | <i>cash consideration / total consideration</i> |
| | | <i>= \$622</i> | |
| <i>Capital gain</i> | = | <i>cash consideration</i> | <i>-</i> |
| | | <i>= \$2,800 - \$622</i> | <i>cost base of cash component</i> |
| | | <i>= \$2,178</i> | |

As the Home shares have been held for more than 12 months, the 50% CGT discount should apply to reduce the capital gain to \$1,089.00.

Cost base of BOQ replacement shares

99. If a Home shareholder chose roll-over, the first element of the cost base of the replacement BOQ share is worked out by attributing, on a reasonable basis, the cost base of the Home share disposed of. However, the cost base of the Home share must first be reduced by so much of it that relates to the cash proceeds (subsections 124-785(2) and (3)).

100. The first element of the reduced cost base of the replacement BOQ share is calculated in the same manner (subsection 124-785(4)).

101. In working out the amount of the cost base of a Home share that is reasonably attributable to the cash consideration, the Commissioner accepts the following method.

Example of allocating cost base

102. *Following on from the example above, Adam needs to allocate the cost base of his Home shares across the cash component and the new BOQ shares.*

Calculation of cost base of BOQ replacement shares

The first element of the cost base of Adam's new BOQ shares is determined as follows:

Cost base of Home shares = \$4,000

Cost base of cash component = \$622

First element of cost base of each new BOQ share = $\frac{\text{cost base of Home shares} - \text{cost base of cash}}{\text{number of new BOQ shares}}$

= $\frac{\$4,000 - \$622}{844}$

= \$4

Acquisition date of BOQ shares

103. The acquisition date of BOQ shares is the date that they are issued to each Home shareholder (that is the Implementation Date) (section 109-10).

104. For Home shareholders who choose scrip for scrip roll-over, the acquisition date of their BOQ shares for CGT discount purposes is the date they acquired the corresponding Home shares that were disposed of for the relevant BOQ shares (item 2 of the table in subsection 115-30(1)).

Issue of BOQ shares to round up fractional interests

105. As a result of the acquisition of BOQ shares, a number of Home shareholders will hold a fraction of a BOQ share. Under the Scheme, a Home shareholder was issued with a part of a BOQ share (a fractional share) to round up the fractional share to the nearest whole number.

106. A share issued by a company in relation to other shares that the recipient owns is called a bonus equity (subsection 130-20(1)). Fractional shares issued to the Home shareholders, following the acquisition of BOQ shares, in order to round up their total holdings to the nearest whole number satisfy this definition. The newly issued fraction (the bonus equity) is in relation to the fraction already held (the original equity).

107. The acquisition date of the bonus equity and the cost base and reduced cost base of the original and bonus equities is worked out under Subdivision 130-A. As no amount has been paid for the bonus fractional shares, and no part of them is a dividend, their acquisition date is the same as the acquisition date for the original fractions (items 1 and 3 in the table in subsection 130-20(3)).

108. For a bonus equity issued in relation to an original equity acquired after 19 September 1985, the first element of the cost base of the original fraction is apportioned in a reasonable way over the original fraction and the bonus fraction (item 1 in the table in subsection 130-20(3)). The apportioned cost bases and reduced cost bases are re-merged when, immediately following the issue of the bonus equity, the original and bonus equities are merged to form a whole share (subsection 112-25(4)).

109. This means that the newly rounded BOQ share will have the same cost base and reduced cost base as the original fractional BOQ share.

Discount capital gains

110. A Home shareholder who makes a capital gain from the disposal of Home shares may be entitled to treat the gain as a discount capital gain in respect of those Home shares that have been held for 12 months, provided the other requirements of Subdivision 115-A are satisfied (section 115-25).

Appendix 2 – Detailed contents list

111. The following is a detailed contents list for this Ruling:

| | Paragraph |
|---|------------------|
| What this Ruling is about | 1 |
| Relevant provision(s) | 2 |
| Class of entities | 3 |
| Qualifications | 4 |
| Date of effect | 7 |
| Scheme | 12 |
| Foreign shareholders | 20 |
| Share sale facility for small parcel participants | 21 |
| Options in Home | 22 |
| Ruling | 23 |
| Disposal of Home ordinary class shares | 23 |
| Availability of scrip for scrip roll-over | 28 |
| Consequences of scrip for scrip roll-over for Home shareholders | 29 |
| Cost base of replacement BOQ shares | 30 |
| Acquisition date of BOQ shares | 33 |
| Discount capital gain | 35 |
| Appendix 1 – Explanation | 36 |
| Disposal of Home ordinary class shares | 36 |
| Availability of scrip for scrip roll-over for Home shareholder | 46 |
| <i>Requirements for scrip for scrip roll-over</i> | 48 |
| <i>Shares are exchanged for shares in another company</i> | 49 |
| <i>The exchange occurs as part of a single arrangement</i> | 51 |
| <i>(a) 80% ownership</i> | 53 |
| <i>(b) All voting share owners participate</i> | 55 |
| <i>(c) Participation is on substantially the same terms</i> | 57 |
| <i>Conditions for roll-over are satisfied</i> | 63 |
| <i>(a) The Home shares are post-CGT shares</i> | 65 |
| <i>(b) A Home shareholder would otherwise make a capital gain</i> | 67 |
| <i>(c) Home shareholders receive a replacement interest in the group acquiring their original share</i> | 69 |

| | |
|--|------------|
| <i>(d) A Home Shareholder must choose to obtain scrip for scrip roll-over</i> | 71 |
| <i>Further conditions are not applicable</i> | 75 |
| <i>Exceptions to obtaining scrip for scrip roll-over are not applicable</i> | 78 |
| <i>(a) Home shareholders are residents of Australia</i> | 79 |
| <i>(b) A capital gain cannot (apart from the roll-over) be otherwise disregarded</i> | 81 |
| <i>(c) Acquiring entity is not a foreign resident</i> | 83 |
| <i>(d) No roll-over is available under Division 122 or Subdivision 124-G</i> | 85 |
| Consequences of scrip for scrip roll-over | 87 |
| <i>Consequences of roll-over where Home shares and cash are received as capital proceeds</i> | 89 |
| <i>Example of partial roll-over</i> | 98 |
| Cost base of BOQ replacement shares | 99 |
| <i>Example of allocating cost base</i> | 102 |
| Acquisition date of BOQ shares | 103 |
| Issue of BOQ shares to round up fractional interests | 105 |
| Discount capital gains | 110 |
| Appendix 2 – Detailed contents list | 111 |

References

Previous draft:

Not previously issued as a draft

Subject references:

- arrangement
- capital proceeds
- CGT event
- company
- cost base
- interests
- mergers
- ordinary share
- original interest
- replacement interest
- resident
- roll-over
- scrip for scrip roll-over
- share
- shareholder

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 100-10(1)
- ITAA 1997 100-20
- ITAA 1997 102-5
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 108-5
- ITAA 1997 109-10
- ITAA 1997 Subdiv 110-A
- ITAA 1997 Subdiv 110-B
- ITAA 1997 112-25(4)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25
- ITAA 1997 115-30(1)
- ITAA 1997 116-20
- ITAA 1997 116-20(1)
- ITAA 1997 Div 122
- ITAA 1997 Subdiv 124-G
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780(1)(a)
- ITAA 1997 124-780(1)(b)
- ITAA 1997 124-780(1)(c)
- ITAA 1997 124-780(2)
- ITAA 1997 124-780(2)(a)
- ITAA 1997 124-780(2)(b)
- ITAA 1997 124-780(2)(c)
- ITAA 1997 124-780(3)
- ITAA 1997 124-780(3)(a)
- ITAA 1997 124-780(3)(b)
- ITAA 1997 124-780(3)(c)
- ITAA 1997 124-780(3)(d)
- ITAA 1997 124-780(3)(e)
- ITAA 1997 124-780(4)
- ITAA 1997 124-780(4)(a)
- ITAA 1997 124-780(4)(b)
- ITAA 1997 124-780(5)
- ITAA 1997 124-782
- ITAA 1997 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(3)
- ITAA 1997 124-785(4)
- ITAA 1997 124-790(1)
- ITAA 1997 124-790(2)
- ITAA 1997 124-795
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(3)
- ITAA 1997 Subdiv 130-A
- ITAA 1997 130-20(1)
- ITAA 1997 130-20(3)
- ITAA 1997 995-1(1)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968
- Corporations Act 2001 411
- Corporations Act 2001 619(2)
- Corporations Act 2001 619(3)

ATO references

- NO: 2008/2776
 ISSN: 1445-2014
 ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ roll-overs - scrip for scrip
 Income Tax ~~ Capital Gains Tax ~~ CGT event A1 - disposal of a CGT asset