


***CR 2007/25 - Income tax: scrip for scrip roll-over:  
merger of Promina Group Limited with  
Suncorp-Metway Limited***

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## Class Ruling

### Income tax: scrip for scrip roll-over: merger of Promina Group Limited with Suncorp-Metway Limited

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#### **① 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.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below 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 115-25 of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

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

## Class of entities

3. The class of entities to which this Ruling applies is the holders of ordinary shares in Promina Group Limited (Promina) who:
- (a) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
  - (b) held their Promina shares on capital account;
  - (c) accepted the offer made by Suncorp-Metway Limited (Suncorp) to acquire their Promina ordinary shares (Promina shares); and
  - (d) are shareholders who choose roll-over.
4. This Ruling does not apply to the holders of Reset Preference Shares.

## Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. 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 14 to 20 of this Ruling.
7. 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.
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## Date of effect

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9. This Ruling applies from 20 March 2007 to 30 June 2007. 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, subject to there being no change in the scheme or in the entities involved in the scheme.

10. 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.

11. If this Class 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)).

12. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class 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.

13. 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).

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## Scheme

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14. The following description of the scheme is based on information provided by KPMG Tax Lawyers Pty Ltd (the applicant). The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application dated 28 November 2006 from the applicant;
- Draft Scheme Booklet for the scheme of arrangement between Promina and Suncorp; and
- Letter from the applicant dated 26 March 2007 confirming further details about the scheme of arrangement.

**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.

15. On 21 October 2006, Suncorp and Promina entered into the Merger Implementation Agreement under which they agreed to merge their businesses by way of a scheme of arrangement.

16. Upon implementation of the scheme of arrangement on the Merger Implementation Date (Merger Date), 20 March 2007, Promina shares were transferred to Suncorp Insurance Holdings Limited (SIHL), a wholly owned subsidiary of Suncorp.

17. In consideration for the transfer of Promina shares to SIHL, Promina ordinary shareholders (Promina shareholders) received 0.2703 Suncorp shares plus \$1.80 in cash for each Promina share.

18. As Promina was listed on the Australian Stock Exchange (ASX) on 12 May 2003 and shares on issue prior to listing were cancelled on listing, all Promina shareholders acquired their shares on or after 20 September 1985.

19. As at the date of this application, Promina had two classes of shares on issue:

- 1,029,025,222 Ordinary shares; and
- 3,000,000 Reset Preference Shares.

Each share carried the same rights to voting, dividends and capital.

20. In addition, as at the date of this application, there were a total of 7,931,607 outstanding 'conditional entitlements' to shares, which were offered to certain employees under Promina's Senior Management Performance Share Plan. Of these 'conditional entitlements':

- 4,997,077 vested to become 4,997,077 Promina shares upon the scheme of arrangement becoming effective; and
- 2,934,530 vested to become 2,934,530 Promina shares upon the Promina Board approving Promina's financial result for the 2006 financial year.

## Ruling

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### **Disposal of Promina shares to SIHL**

21. CGT event A1 happened when a Promina shareholder disposed of their Promina shares to SIHL on the Merger Date under the scheme described in this Ruling (subsections 104-10(1), 104-10(2), and 104-10(3)).

22. The capital proceeds for each Promina share was \$1.80 plus the market value of 0.2703 of a Suncorp share at the time the Promina shares were transferred to SIHL at the Merger Date (subsection 116-20(1)).

23. A Promina shareholder made a capital gain from CGT event A1 happening if the capital proceeds for a Promina share exceeded its cost base. The Promina shareholder made a capital loss if those capital proceeds are less than the share's reduced cost base (subsection 104-10(4)).

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

24. Promina shareholders are eligible to choose scrip for scrip roll-over to the extent that they received Suncorp shares in exchange for their Promina shares under the scheme of arrangement if:

- (a) apart from the roll-over under Subdivision 124-M, they would make a capital gain from the CGT event A1 (section 104-10) that happens to their Promina shares (paragraph 124-780(3)(b)); and
- (b) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement Suncorp share (subsection 124-795(2)).

25. If a Promina shareholder chooses roll-over, a capital gain from a Promina share is disregarded to the extent that the shareholder received a Suncorp share. The capital gain is not disregarded to the extent that the shareholder received cash for the disposal of their Promina share (section 124-790).

26. If a Promina shareholder chooses roll-over, the cost base of a replacement Suncorp share is worked out by reasonably attributing to it the cost base of any Promina share for which it was exchanged and for which a partial roll-over will be obtained. However, the cost base of the Promina share must first be reduced by so much of it that will be taken into account in working out the shareholder's capital gain relating to the cash proceeds (subsections 124-785(2) and (3)).

#### **Discount capital gain**

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

#### **Example**

28. The following example provides guidance for Promina shareholders to work out their capital gains tax consequences if they choose roll-over in respect of the disposal of their shares to SIHL under the scheme of arrangement.

29. The example, including the figures used, is only to illustrate the application of the relevant taxation provisions and does not refer to any particular Promina shareholder nor to any particular share price. The market value to be used will be the market value of the Suncorp shares at the Merger Date.

30. The example shows how to work out:

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

31. Where a Promina shareholder works out the first element of the cost base of their Suncorp shares in accordance with the approach adopted in the example, the Tax Office will accept that this represents a reasonable attribution of the cost base of each Promina share. However, it is recognised that this approach may not be the only reasonable method.

32. Example: Aimee acquired 1,000 shares in Promina for \$2,000 in July 2003. At the Merger Date, she received \$1,800 cash ( $\$1.80 \times 1000$ ) and 270 Suncorp shares. For the purposes of this example the market value of a Suncorp share at the Merger Date is \$21.00.

### **Capital gain attributable to ineligible proceeds**

33. Aimee chooses for roll-over to apply to the extent that she is able. Aimee works out the capital gain from the ineligible proceeds using the following formula:

$$\begin{aligned}\text{Ineligible proceeds} &= \$1,800 \\ \text{Total proceeds} &= \$1,800 + (270 \times \$21.00) \\ &= \$7,470\end{aligned}$$

Capital gain = Ineligible proceeds less cost base of ineligible part

Cost base of ineligible part = Cost base of Promina shares  $\times$  (ineligible proceeds/Total proceeds)

$$\begin{aligned}&= \$2,000 \times (\$1,800/\$7,470) \\ &= \$482\end{aligned}$$

$$\begin{aligned}\text{Capital Gain} &= \$1,800 - \$482 \\ &= \$1,318\end{aligned}$$

The capital gain for Aimee is a discount capital gain and she is able to reduce the gain by the 50% CGT discount to \$659.

**Cost base of Suncorp shares**

34. The first element of the cost base of each of Aimee's 270 Suncorp shares is determined by reference to the cost base of each of her Promina shares that was not taken into account in working out the capital gain Aimee made in respect of the ineligible proceeds. The cost base of Aimee's shares is therefore:

Cost base of Promina shares	= \$2,000
Cost base attributable to ineligible proceeds	= \$482 (taken into account above)
First element of cost base of each Suncorp share	= \$1,518/270
(that is, \$2,000 - \$482)/270)	= \$5.62

35. The first element of the reduced cost base of Aimee's shares is calculated in a similar manner.

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**Commissioner of Taxation****4 April 2007**

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## Appendix 1 – Explanation

**①** *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 Promina shares to SIHL**

36. CGT event A1 happens if there is a change in the ownership of an asset from one entity to another. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (section 104-10).

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

38. CGT event A1 happened at the time Promina shares were transferred to SIHL on the Merger Date.

39. The capital proceeds for each Promina share was \$1.80 plus the market value of 0.2703 of a Suncorp share at the time the Promina shares were transferred to SIHL at the Merger Date (subsection 116-20(1)).

40. A Promina shareholder made a capital gain from CGT event A1 happening if the capital proceeds in respect of the disposal of their Promina share exceeded its cost base. A Promina shareholder made a capital loss if the capital proceeds in respect of the disposal of a Promina share are less than the Promina share's reduced cost base (subsection 104-10(4)).

41. The time of CGT event A1 happening is also relevant to determining the capital proceeds received for each Promina share. Subsection 116-20(1) provides that the capital proceeds from a CGT event are the money and market value of any property received or entitled to be received (worked out at the time of the event happening).

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

42. Where scrip for scrip roll-over is chosen in respect of the capital gain arising on the disposal of a Promina share, the capital gain from the disposal is disregarded to the extent that the shareholder received a Suncorp share.

43. If the Promina shareholder chooses roll-over, the cost base of each Suncorp share is worked out by reasonably attributing to it a proportion of the cost base of the Promina share for which it was exchanged and for which roll-over is obtained. The cost base of the Promina share must first be reduced by so much of it that is taken into account in working out the shareholder's capital gain relating to the ineligible proceeds (cash of \$1.80 per Promina share).

44. A Promina shareholder who derives a capital gain from the ineligible proceeds may be eligible to treat the gain as a discount capital gain in respect of those Promina shares that were held for at least 12 months and provided the other requirements of Subdivision 115-A are satisfied (section 115-25).

#### **Requirements for scrip for scrip roll-over – Subdivision 124-M**

45. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a shareholder to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the Scheme that is the subject of this Ruling are:

- (a) shares are exchanged for shares in another company;
- (b) the exchange occurs as part of a single arrangement;
- (c) conditions for roll-over are satisfied;
- (d) further conditions are not applicable; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

46. These requirements are explained below.

#### ***Shares are exchanged for shares in another company***

47. Paragraph 124-780(1)(a) requires an entity (a Promina shareholder) to exchange a share (a Promina share) in a company for a share in another company.

48. This requirement is satisfied by a Promina shareholder who received the Suncorp share and cash as consideration for the disposal of their Promina share under the scheme of arrangement because at least some of the consideration they received for the disposal of their Promina share consisted of a Suncorp share. Roll-over is available to the extent that the Promina shareholder received Suncorp shares for their Promina shares.

#### ***The exchange occurs as part of a single arrangement***

49. Paragraph 124-780(1)(b) requires that shares in an entity (Promina – the original entity) be exchanged in consequence of a single arrangement.

50. In the context of the scrip for scrip roll-over provisions, the offer to Promina shareholders was a 'single arrangement'. The single arrangement must also satisfy the following conditions.

*(a) 80% ownership*

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

52. Under the Scheme, 100% of the ordinary shares owned by Promina shareholders were acquired by SIHL. Each of these ordinary shares satisfies the definition of a 'voting share' in subsection 995-1(1). Further, upon the Scheme being implemented, SIHL became the sole owner of the voting shares in Promina.

53. As SIHL has acquired more than 80% of the ordinary shares in Promina in consequence of this arrangement, this condition is satisfied.

*(b) All voting share owners participate*

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

55. This requirement has been satisfied because all the owners of voting shares in Promina were entitled to participate in the Scheme, as approved by the shareholders.

*(c) Participation is on substantially the same terms*

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

57. This requirement has been satisfied as all of the ordinary shareholders in Promina are entitled to participate in the scheme of arrangement on substantially the same terms.

58. Also, under the scheme of arrangement, Suncorp shares that were issued to certain foreign Promina shareholders were alternatively issued to the Sale Agent who arranged for their sale on the ASX. Net proceeds from the sale (after deduction of any applicable brokerage and other selling costs, taxes and charges) were then paid to those foreign Promina shareholders. This has not prevented the arrangement being on substantially the same terms for all shareholders in Promina.

***Conditions for roll-over are satisfied***

59. 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 Promina share for which scrip for scrip roll-over is chosen.

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

***(a) Promina shares are post-CGT shares***

61. Paragraph 124-780(3)(a) requires the original interest holder (a Promina shareholder) to have acquired its original interest (a Promina ordinary share) on or after 20 September 1985.

62. As Promina was listed on the ASX on 12 May 2003 and shares on issue prior to the listing were cancelled on listing, all of the issued shares in Promina were acquired on or after 20 September 1985. Roll-over is available for those Promina shares.

***(b) Promina shareholder would otherwise make a capital gain***

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

64. As explained in paragraph 40 of this Ruling, whether a Promina shareholder would, apart from the roll-over, make a capital gain from the disposal of any of their shares to SIHL is a question of fact that is dependent on the specific circumstances of each shareholder - in particular, on the cost base of each Promina share and the value of the capital proceeds received. Therefore, whether this condition is met will depend on the individual circumstances of the Promina shareholder.

***(c) Promina shareholder receives an interest in the group acquiring their original share***

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

66. This requirement has been satisfied as the Promina shareholders received shares in Suncorp, the ultimate holding company of the acquiring entity.

*(d) Promina shareholder must choose to obtain scrip for scrip roll-over*

67. Paragraph 124-780(3)(d) requires that the original interest holder (Promina shareholder) chooses the roll-over, or if section 124-782 applies to it for the scheme of arrangement, it and the replacement entity jointly choose to obtain the roll-over.

68. Subject to their eligibility (see paragraph 24 of this Ruling), whether a Promina shareholder chooses to obtain roll-over in relation to the disposal of a Promina share is a question of fact for each Promina shareholder.

69. The additional requirements in paragraphs 124-780(3)(d) and 124-780(3)(e) that the 'replacement entity jointly chooses roll-over relief are not relevant to the scheme of arrangement because there was no 'significant stakeholder' or 'common stakeholder' (as defined in section 124-783) in Promina at the time the scheme of arrangement was implemented.

70. Paragraph 124-780(3)(d) requires that the replacement entity jointly choose roll-over where section 124-782 applies. Subsection 124-782(1) applies where:

- (a) the original interest holder obtains roll-over relief; and
- (b) the holder is a \*significant stakeholder or a \*common stakeholder.

71. The term \*significant stakeholder is defined in section 124-783. Promina reviewed its shareholder register and identified that it does not have any significant stakeholders.

72. The term \*common stakeholder is defined in section 124-783. Promina had more than 300 shareholders at the time of the transaction. Therefore, the exclusion in subsection 124-783(5) applies so that Promina did not have any common stakeholders.

73. As Promina did not have one or more significant stakeholders or common stakeholders, the requirement of section 124-780(3) will not be relevant.

### ***Further conditions are not applicable***

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

- (a) neither the original entity (Promina) nor the replacement entity (SIHL) 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 (SIHL) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b)).

75. Suncorp, through SIHL, dealt with all Promina shareholders at arm's length. Therefore, the further conditions in subsection 124-780(4) are not relevant.

76. Even if any Promina shareholders were considered to be not at arm's length, paragraph 124-780(4)(a) does not apply because Promina had at least 300 members just before the scheme of arrangement was implemented. Equally, paragraph 124-780(4)(b) does not apply as Promina, the Promina shareholders and SIHL were not members of the same linked group just before the arrangement commenced.

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

77. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen. These exceptions are as follows.

*(a) Promina shareholders are residents of Australia*

78. Subsection 124-795(1) provides that roll-over is not available if the original interest holder (a Promina shareholder) is a foreign resident and the replacement entity is not an Australian resident.

79. The class of entities to whom the Ruling applies is limited to Promina shareholders who are residents of Australia at the time of the implementation of the scheme of arrangement. As a consequence, the exception in subsection 124-795(1) does not apply to limit the Ruling in this regard.

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

80. Paragraph 124-795(2)(a) provides that the roll-over is not available if any capital gain the original interest holder (a Promina shareholder) makes from their replacement interest (a Suncorp share) would be disregarded.

81. Whether the capital gain arising because of the disposal of a Promina share is disregarded because of the operation of another provision of the ITAA 1997 (for example, the Promina shares are trading stock held by the Promina shareholder) is a question of fact for each Promina shareholder. Paragraph 24(b) of this Ruling limits the application of this Ruling in this regard.

*(c) Acquiring entity is not a foreign resident*

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

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

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

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

85. This exception does not apply as the circumstances of the scheme of arrangement are such that a roll-over in Division 122 or Subdivision 124-G is not available.

*(e) Promina is not a foreign resident*

86. Subsections 124-795(4) and (5) provide that roll-over is not available for certain original entities that are foreign residents.

87. This exception does not apply as Promina (the original entity) is not a foreign resident.

## **Consequences of roll-over**

88. 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 merger if the shareholder receives a replacement share in exchange (subsection 124-785(1)).

89. 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)).

90. If the shareholder receives other capital proceeds as well as the replacement shares, the capital gain is disregarded in part (subsection 124-790(1)). Only a portion of the cost base of the original shares can be allocated to the replacement shares (subsections 124-785(2) and 124-785(3)).

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

91. Because the capital proceeds paid to Promina shareholders in respect of their Promina shares consisted of Suncorp shares and cash, a Promina shareholder can choose only partial roll-over. Roll-over is not available to the extent that any capital gain is attributable to the cash of \$1.80 per Promina share (subsection 124-790(1)).

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

93. In making a reasonable apportionment of the cost base of a Promina share, it would be appropriate for a shareholder to consider the value of the ineligible proceeds, fixed at \$1.80, and the value of the Suncorp shares on the date that CGT event A1 happened to their Promina share.

94. The cost base and reduced cost base of the Promina shares, reduced by that portion that is taken into account in working out any capital gain in respect of the ineligible proceeds, forms the first element of the cost base of Suncorp shares (subsections 124-785(2), 124-785(3) and 124-785(4)).



## Appendix 2 – Detailed contents list

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

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Subject references:*

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

### *Legislative references:*

- 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)
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