


CR 2011/31 - Income tax: scrip for scrip roll-over: exchange of shares in Mosaic Oil N.L. for shares in AGL Energy Limited

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Class Ruling

Income tax: scrip for scrip roll-over: exchange of shares in Mosaic Oil N.L. for shares in AGL Energy 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of entities to whom this Ruling applies are the shareholders of Mosaic Oil N.L. (Mosaic) who, on the scheme implementation date:

- (a) participated in the scheme and exchanged their shares in Mosaic (Mosaic shares) for shares in AGL Energy Limited (AGL) or cash;
- (b) held their Mosaic shares on capital account;
- (c) were a 'resident of Australia' within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- (d) were not a 'temporary resident of Australia' within the meaning of subsection 995-1(1);
- (e) were not 'significant stakeholders' or 'common stakeholders' in relation to the scheme within the meaning of these expressions in Subdivision 124-M; and
- (f) were not subject to the Taxation of Financial Arrangements rules in Division 230 in relation to gains and losses on their Mosaic shares.

(Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them).

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. 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 9 to 26 of this Ruling.

6. 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

8. This Ruling applies from 1 July 2010 to 30 June 2011. The Ruling continues to apply after 30 June 2011 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. 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:

- Class Ruling application from Deloitte Touche Tohmatsu Ltd dated 10 December 2010;
- the Scheme Implementation Deed (SID) between Mosaic and AGL dated 14 July 2010;
- Scheme Booklet released on 6 September 2010; and
- information provided by the applicant on 8 February 2011.

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

Overview

10. The subject of this ruling involves AGL acquiring all of the Mosaic shares on issue by way of a scheme of arrangement.

Mosaic

11. Mosaic is an Australian resident public company primarily involved in the exploration for development of oil and conventional gas in Queensland.
12. At the time of the scheme Mosaic was listed on the Australian Securities Exchange (ASX) and on the Port Moresby Stock Exchange (POMSoX).

AGL

13. AGL is an Australian resident public company limited by shares and listed on the ASX.

The scheme

14. On 14 July 2010, Mosaic and AGL signed a SID under which AGL proposed to acquire all of the Mosaic shares on issue by way of a scheme of arrangement under the *Corporations Act 2001*.
15. The scheme was approved by the shareholders of Mosaic on 7 October 2010 and approved by the Federal Court of Australia, New South Wales registry on 11 October 2010.
16. The scheme was implemented on 20 October 2010 (the scheme implementation date). As a result of the scheme, Mosaic became a wholly owned subsidiary of AGL.
17. Mosaic had two classes of shares on issue before the scheme implementation date:
 - fully paid Mosaic shares (FPMS); and
 - ordinary contributing shares issued under the Mosaic Employee Share Scheme (ESS).
18. This ruling does not apply to the ESS ordinary contributing shares.
19. All Mosaic shares were issued after 19 September 1985.
20. Under the scheme, holders of FPMS (Mosaic shareholders) can choose to receive either:
 - cash consideration of 15 cents per each FPMS held (less any Mosaic dividends and distributions declared or determined between 14 July 2010 and the scheme implementation date); or
 - scrip consideration of 0.0101 new AGL ordinary shares (AGL shares) for every one FPMS held (to be adjusted for any Mosaic dividends and distributions declared or determined between 14 July 2010 and the scheme implementation date).

21. Where no election was made by a Mosaic shareholder, the shareholder received cash consideration for their Mosaic shares.
22. Where the calculation of the aggregate number of AGL shares to be issued to a particular Mosaic shareholder would result in the issue of a fraction of an AGL share, the entitlement was rounded down to the nearest number of whole AGL shares. The Mosaic shareholder received the balance of the scheme consideration as a cash amount equal to the fractional value of an AGL share.
23. While all shareholders could choose either cash or scrip, ineligible foreign shareholders or Mosaic shareholders who held unmarketable parcels of Mosaic shares could not receive scrip consideration. The number of new AGL shares that they were entitled to under the scheme were issued to a Sale Agent and the net proceeds of the sale were distributed amongst those ineligible foreign shareholders and unmarketable parcel shareholders in accordance with the scheme.
24. For joint holders of FPMS who made a valid scrip election, scrip consideration was provided by the relevant AGL shares being issued to and registered in the names of the joint holders. Alternatively, cash consideration was made payable to, and sent to, the holder whose name appeared first in the Mosaic share register as at the scheme implementation date.

Other matters

25. The new AGL shares rank equally in all respects with existing AGL shares and are free from any mortgage, charge, lien, encumbrance or other security interest.
26. No dividends were distributed to Mosaic shareholders by Mosaic as part of the scheme.

Ruling**CGT event A1 happened on the disposal of Mosaic shares**

27. CGT event A1 happened as a result of the disposal by a Mosaic shareholder of their Mosaic shares to AGL under the scheme described in the Ruling (subsection 104-10(1)).
28. CGT event A1 happens when a contract to dispose of an asset is entered into or if there is no contract, when the change of ownership occurs (subsection 104-10(3)).
29. As there was no contract between a Mosaic shareholder and AGL, the time of the event was when the Mosaic shares were transferred to AGL on the scheme implementation date, 20 October 2010 (paragraph 104-10(3)(b)).

Capital gain or loss

30. A Mosaic shareholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Mosaic share exceeded its cost base. A Mosaic shareholder made a capital loss if those capital proceeds were less than the share's reduced cost base (subsection 104-10(4)).

Capital proceeds

31. The capital proceeds from a CGT event are the money and the market value of any property received or entitled to be received (worked out at the time of the event happening) (subsection 116-20(1)).

32. The capital proceeds for each Mosaic share are the cash consideration and the market value of AGL shares received in respect of CGT event A1 happening, worked out at the time of the CGT event (being the scheme implementation date).

If a capital gain is made

Availability of scrip for scrip roll-over

33. Subject to the qualification in paragraph 34 of this Ruling, a Mosaic shareholder who made a capital gain from the disposal of their Mosaic shares may choose scrip for scrip roll-over under Subdivision 124-M (section 124-780).

34. Scrip for scrip roll-over cannot be chosen if any capital gain the Mosaic shareholder made from replacement AGL shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

If scrip for scrip roll-over is chosen

35. If a Mosaic shareholder chooses scrip for scrip roll-over, the capital gain made from the disposal of a Mosaic share is disregarded to the extent the Mosaic shareholder received replacement AGL shares for the disposal of their Mosaic shares. The capital gain is not disregarded to the extent that the Mosaic shareholder received cash for the disposal of their Mosaic shares (subsections 124-785(1) and 124-790(1)).

If scrip for scrip roll-over is not chosen, or cannot be chosen

36. If a Mosaic shareholder does not, or cannot, choose scrip for scrip roll-over, the capital gain made from the disposal of their Mosaic shares is not disregarded.

Discount capital gain

37. Mosaic shareholders who made a capital gain where scrip for scrip roll-over is not chosen or cannot be chosen, may be eligible to treat the gain as a 'discount capital gain' provided that they satisfy the requirements of Subdivision 115-A.

Cost base of AGL shares***If scrip for scrip roll-over is chosen***

38. Where scrip for scrip roll-over is chosen, the first element of the cost base of each AGL share is worked out by reasonably attributing to it the cost base of the Mosaic shares exchanged for it. The cost base is reduced by so much of it that is attributable to the cash consideration (subsections 124-785(2) and (3)).

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

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

$$\text{Cost base of Mosaic shares exchanged} \times \frac{\text{Cash consideration}}{\text{Market value of AGL shares plus cash consideration}}$$

The remaining portion of the cost base is used to determine the first element of the cost base (and reduced cost base) for the replacement AGL shares issued as consideration for the transfer of the Mosaic shares (subsections 124-785(2), 124-785(3) and 124-785(4)). The Commissioner accepts that the cost base of the AGL shares can be worked out using the following method:

$$\text{Cost base of Mosaic shares exchanged} \times \frac{\text{Market value of AGL shares}}{\text{Market value of AGL shares plus cash consideration}}$$

If scrip for scrip roll-over is not chosen, or cannot be chosen

41. Where scrip for scrip roll-over is not, or cannot, be chosen, the first element of the cost base and reduced cost base of each AGL share received is equal to the market value of the Mosaic shares given in exchange for it (subsections 110-25(2) and 110-55(2)). The Commissioner accepts the following method for working out the relevant value of the Mosaic shares given in exchange for each AGL share:

$$\text{Market value of Mosaic shares exchanged} \times \frac{\text{Market value of AGL shares}}{\text{Market value of AGL shares plus cash consideration}}$$

42. In working out the market value of a Mosaic share, the Commissioner accepts the following method:

$$\begin{array}{ccccccc} & & & & 1 & & \\ & & & & \hline \text{Market} & & \text{Cash} & & \text{Number of} & & \text{Market value of} \\ \text{value of} & = & \text{consideration} & + & \text{Mosaic} & \times & \text{AGL share on} \\ \text{Mosaic} & & \text{per Mosaic} & & \text{shares} & & \text{Implementation} \\ \text{share} & & \text{share} & & \text{exchanged} & & \text{Date} \\ & & \text{exchanged} & & \text{for each} & & \\ & & & & \text{AGL share} & & \end{array}$$

Acquisition date of AGL shares

43. Mosaic shareholders acquired their AGL shares on the date those shares were issued to each Mosaic shareholder, that is 20 October 2010 (item 2 of the table in section 109-10).

44. However, for the purposes of determining eligibility to a discount capital gain, Mosaic shareholders who choose scrip for scrip roll-over are taken to have acquired their AGL shares when they acquired the corresponding Mosaic shares (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation

16 March 2011

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.*

45. The tax consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this ruling are outlined in the Ruling part of this document.

46. The significant tax consequence for Mosaic shareholders is the availability of scrip for scrip roll-over under Subdivision 124-M. Scrip for scrip roll-over enables a shareholder to disregard a capital gain from a share that is disposed of by way of a scheme of arrangement if the shareholder receives a replacement share in the exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

47. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the circumstances of the scheme of arrangement between Mosaic and AGL are:

- (a) shares in a company 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 or are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

48. Under the scheme the subject of this Ruling the conditions for roll-over under Subdivision 124-M are satisfied. The Ruling section provides a detailed explanation of the Commissioner's decision in this regard. Therefore, no further explanation is warranted other than the following matters relating to the determination of market value.

49. The Commissioner accepts that the market value of the AGL shares on the scheme implementation date may be determined by reference to the closing share price of AGL shares traded on the ASX on that day being 20 October 2010. The closing price of AGL shares on 20 October 2010 was \$16.61.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- CGT asset
- CGT capital proceeds
- CGT cost base
- CGT event A1 – disposal of a CGT asset
- scrip for scrip roll-over
- takeovers & mergers

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)

- ITAA 1997 109-10
 - ITAA 1997 110-25
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - 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 124-795(2)(a)
 - ITAA 1997 Div 230
 - ITAA 1997 995-1(1)
 - Corporations Act 2001
 - TAA 1953
 - Copyright Act 1968
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ATO references

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