


# ***CR 2019/1 - Income tax: scrip for scrip roll-over: exchange of shares in Fairfax Media Limited for shares in Nine Entertainment Co. Holdings Limited***

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## Class Ruling

### Income tax: scrip for scrip roll-over: exchange of shares in Fairfax Media Limited for shares in Nine Entertainment Co. Holdings Limited

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**❶ This publication provides you with the following level of protection:**

This publication (excluding appendices) 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.

## Summary – what this Ruling is about

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

### Relevant provisions

2. The relevant provisions dealt with in this Ruling are:
- section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
  - section 102-10 of the ITAA 1997
  - Division 104 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

- Subdivision 124-M of the ITAA 1997
- Division 855 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 are the holders of ordinary shares in Fairfax Media Limited (Fairfax) who:

- were registered on the share register of Fairfax on the Record Date (30 November 2018) for participation in the scheme that is the subject of this Ruling
- are not an Ineligible Overseas Shareholder (being a resident of a jurisdiction other than Australia, New Zealand, Hong Kong, Singapore or the United Kingdom)
- did not acquire their Fairfax shares pursuant to an employee share scheme
- did not hold their Fairfax ordinary shares as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, the holders held their shares on capital account, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Fairfax shares.

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

In this Ruling, a person belonging to this class of entities is referred to as a 'Fairfax shareholder'.

## **Qualifications**

4. The Commissioner makes this Ruling based on the precise scheme 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 8 to 23 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.

## Date of effect

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7. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

## Scheme

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8. The following description of the scheme is based on information provided by the applicant.

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

### Fairfax

9. Fairfax is a media company that was listed on the Australian Securities Exchange (ASX).

10. Fairfax owned print publications, held majority interests in an ASX-listed radio business and an ASX-listed real estate advertising business, and participated in a joint venture with Nine Entertainment Co. Holdings Limited for the Stan subscription video on demand platform.

### Nine Entertainment Co. Holdings Limited (Nine)

11. Nine is a media company listed on the ASX. Nine owns free to air television channels and a digital publishing business and participated in a joint venture with Fairfax for the Stan subscription video on demand platform.

### The transfer of Fairfax shares to Nine

12. On 25 July 2018, Nine and Fairfax entered into a Scheme Implementation Agreement under which Nine proposed to acquire all of the ordinary shares in Fairfax by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.

13. The scheme of arrangement was approved by a meeting of Fairfax shareholders on 19 November 2018.

14. On 7 December 2018 (the Implementation Date), Fairfax shareholders were issued with 0.3627 new ordinary shares in Nine, and received A\$0.025 (2.5 cents) of cash, in exchange for each ordinary share they held in Fairfax.
15. Under the scheme of arrangement, the shares in Fairfax were transferred to a wholly owned subsidiary of Nine.
16. Immediately after the Implementation Date, the shareholders of Fairfax owned approximately 48.9% of the shares in the combined group.

## **Other matters**

17. All of the shareholders of Fairfax were offered the opportunity to participate in the scheme of arrangement, and the scheme of arrangement was available to all Fairfax shareholders on the same terms.
18. A shareholder of Fairfax who was an Ineligible Overseas Shareholder had the Nine shares to which they were entitled sold on their behalf by a Sale Agent on the ASX. The net sale proceeds were remitted to the Ineligible Overseas Shareholders by Nine.
19. Fairfax did not have a 'significant stakeholder' or a 'common stakeholder' in relation to the scheme within the meaning of those expressions in section 124-783.
20. Paragraph 124-780(3)(f) is satisfied in respect of the transfer of Fairfax shares to Nine.
21. Nine did not make a choice that Fairfax shareholders cannot obtain Subdivision 124-M roll-over for CGT event A1 happening in relation to the exchange of Fairfax shares for the purposes of subsection 124-795(4).
22. Shares in Fairfax are not 'taxable Australian property' under items 1, 2 or 4 of the table in section 855-15.
23. Fairfax shareholders who held their Fairfax shares on 17 November 2017, received shares in Domain Holdings Australia Limited from Fairfax on 22 November 2017 and participate in the scheme that is the subject of this Ruling are required to first reduce the cost base and reduced cost base of their Fairfax shares by A\$0.233 (23.3 cents) per share.

## **Ruling**

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### **CGT event A1 happened on the disposal of Fairfax shares**

24. CGT event A1 happened when Fairfax shareholders disposed of each of their Fairfax shares (section 104-10).
25. The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

26. A Fairfax shareholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Fairfax share exceeded the cost base of that share (subsection 104-10(4)).

27. A Fairfax shareholder made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a Fairfax share were less than the reduced cost base of that share (subsection 104-10(4)).

28. The capital proceeds from CGT event A1 happening to each Fairfax share is the total of A\$0.025 (2.5 cents) and the market value of the 0.3627 ordinary shares in Nine received in respect of the disposal of that Fairfax share (subsection 116-20(1)). The market value of an ordinary share in Nine is worked out as at the time of CGT event A1, which is on the Implementation Date.

#### **Availability of scrip for scrip roll-over if a capital gain is made from the disposal of Fairfax shares**

29. Subject to the qualification in the following paragraph, a Fairfax shareholder who made a capital gain from the disposal of their Fairfax shares may choose to obtain scrip for scrip roll-over for that part of the capital gain that is attributable to the receipt of shares in Nine (sections 124-780, 124-785 and 124-790).

30. Scrip for scrip roll-over cannot be chosen if any capital gain a Fairfax shareholder might make from their replacement shares in Nine would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

#### **Consequences if scrip for scrip roll-over is chosen in relation to Fairfax shares**

31. If scrip for scrip roll-over is chosen, that part of the capital gain that is attributable to the receipt of Nine shares is disregarded (subsections 124-785(1) and 124-790(1)). Any part of the capital gain that is attributable to the receipt of cash is not disregarded because it is ineligible proceeds for which roll-over is not available (subsection 124-790(1)).

32. For the purposes of determining eligibility to make a discount capital gain, the shares in Nine acquired in exchange for Fairfax shares are taken to have been acquired on the date a Fairfax shareholder acquired, for CGT purposes, the corresponding Fairfax shares (item 2 of the table in subsection 115-30(1)).

## **Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen, in relation to Fairfax shares**

33. A Fairfax shareholder who does not choose roll-over, or cannot choose roll-over, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their Fairfax shares in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

34. A Fairfax shareholder who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. In particular, the Fairfax shares that were disposed of must have been acquired by the Fairfax shareholder at least 12 months before the Implementation Date.

35. The shares in Nine were acquired by a Fairfax shareholder when they were issued by Nine on the Implementation Date (item 2 of the table in section 109-10).

## **Cost base and reduced cost base of shares in Nine received in relation to the disposal of Fairfax shares**

36. The method for calculating the cost base and reduced cost base of the shares in Nine acquired by a Fairfax shareholder in exchange for their Fairfax shares depends on whether scrip for scrip roll-over is chosen.

### ***Scrip for scrip roll-over is chosen***

37. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of a replacement share in Nine that is received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Fairfax shares for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

38. Fairfax shareholders will have to reduce the cost base and reduced cost base of their Fairfax shares by so much of it that is attributable to the cash component of the capital proceeds they received (subsection 124-785(3)).

39. Fairfax shareholders can calculate the first element of the cost base and reduced cost base of each replacement Nine share by dividing the aggregate cost bases of their Fairfax shares (as reduced under subsection 124-785(3)) by the number of replacement Nine shares received (subsections 124-785(2) and (4)).

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

40. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the cost base and reduced cost base of a replacement share in Nine that is received is equal to the market value of the Fairfax shares given in respect of acquiring the share in Nine (subsections 110-25(2) and 110-55(2)), reduced by the proportion of the market value of the Fairfax shares that is reasonably attributable to the cash component of the capital proceeds they received (subsection 112-30(1)).

41. The market value of Fairfax shares is worked out as at the time of the acquisition, which is on the Implementation Date.

**Foreign resident Fairfax shareholders**

42. Shares in Fairfax are not 'taxable Australian property' under items 1, 2 or 4 of the table in section 855-15. Therefore, a Fairfax shareholder who is a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the Implementation Date will only make a capital gain or capital loss from the disposal of shares in Fairfax if the shares are:

- a CGT asset that they have used at any time in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15), or
- a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident) (item 5 of the table in section 855-15).

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**Commissioner of Taxation**9 January 2019

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## Appendix 1 – Explanation

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**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.*

43. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

44. The main tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M in relation to the disposal of Fairfax shares.

45. The roll-over under Subdivision 124-M enables a shareholder in a company to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in another company in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

46. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder in a company being eligible to choose scrip for scrip roll-over. The main requirements 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 is in consequence of a single arrangement
- (c) conditions for the roll-over are satisfied
- (d) further conditions, if applicable, are satisfied
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

47. The disposal of Fairfax shares satisfies the requirements for the roll-over under Subdivision 124-M.

## **Appendix 2 – Detailed contents list**

48. 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

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- ITAA 1997 115-30(1)
  - ITAA 1997 116-20(1)
  - ITAA 1997 Subdiv 124-M
  - ITAA 1997 124-780
  - ITAA 1997 124-780(3)(f)
  - ITAA 1997 124-783
  - ITAA 1997 124-785
  - ITAA 1997 124-785(1)
  - ITAA 1997 124-785(2)
  - ITAA 1997 124-785(3)
  - ITAA 1997 124-785(4)
  - ITAA 1997 124-790
  - ITAA 1997 124-790(1)
  - ITAA 1997 124-795(2)(a)
  - ITAA 1997 124-795(4)
  - ITAA 1997 Div 230
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  - Corporations Act 2001
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  - ITAA 1997 104-10
  - ITAA 1997 104-10(3)(b)
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  - ITAA 1997 112-30(1)
  - ITAA 1997 Subdiv 115-A
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ATO references

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