



CR 2022/24 - Aventus Group - exchange of shares in Aventus Holdings Limited for shares in Home Consortium Limited - scrip for scrip roll-over

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 This document has changed over time. This is a consolidated version of the ruling which was published on *23 March 2022*



Status: **legally binding**

Class Ruling

Aventus Group – exchange of shares in Aventus Holdings Limited for shares in Home Consortium Limited – scrip for scrip roll-over

1 Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for the Australian-resident holders of Aventus Holdings Limited (AHL) who exchange all their shares in AHL for shares in Home Consortium Limited (HCL).
2. Full details of this scheme are set out in paragraphs 21 to 36 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were a holder of AHL shares
 - participated in the scheme that is the subject of this Ruling
 - elected to receive 'Scrip Consideration' for the disposal of all your shares in AHL (to HCL)
 - were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) or a non-resident (that is, not an 'Ineligible

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Foreign Securityholder') whose shares in AHL (and replacement shares in HCL) qualify as indirect Australian real property interests (as defined in section 855-25)

- did not hold your AHL shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)); that is, the AHL shares were held on capital account for tax purposes.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 21 to 36 of this Ruling.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

CGT event A1 happened on the disposal of your Aventus Holdings Limited shares

7. CGT event A1 happened when you disposed of your AHL shares to HCL (section 104-10).

8. The capital proceeds from CGT event A1 happening is the market value of the HCL shares you received in respect of the disposal of your AHL shares (paragraph 116-20(1)(b)).

9. The market value of the HCL shares is worked out at the time of CGT event A1 happening. The time of the CGT event A1 happening is the Implementation Date of 14 February 2022.

10. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your AHL shares exceed the cost base of the shares (subsection 104-10(4)). You will make a capital loss if the capital proceeds were less than the reduced cost base of the AHL shares (subsection 104-10(4)).

Availability of scrip for scrip roll-over for your Aventus Holdings Limited shares

11. If you make a capital gain from the disposal of your AHL shares (in return for HCL shares) you may choose to obtain scrip for scrip roll-over for that gain (section 124-780).

12. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from the replacement interest (the HCL shares) would be disregarded, except because of a roll-over (paragraph 124-795(2)(a) such as if you hold your replacement HCL shares as trading stock).

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Consequences if you choose scrip for scrip roll-over for your Aventus Holdings Limited shares

Capital gain is disregarded

13. If you choose scrip for scrip roll-over, the capital gain made from the disposal of your AHL shares (in return for HCL shares) is disregarded (subsection 124-785(1)).

Cost base and reduced cost base of Home Consortium Limited shares

14. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement HCL share you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the AHL shares for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

15. You can calculate the first element of the cost base and reduced cost base of each replacement HCL share by dividing the aggregate cost bases of your AHL shares by the number of replacement HCL shares you received (subsections 124-785(2) and (4)).

Acquisition date of Home Consortium Limited shares

16. If you choose scrip for scrip roll-over, the time of acquisition of the replacement HCL shares is the time of acquisition of the original AHL shares (table item 8C of section 109-55 and table item 2 of section 115-30).

Consequences if you do not choose (or cannot choose) scrip for scrip roll-over for your Aventus Holdings Limited shares

Capital gain is not disregarded

17. If you do not choose (or cannot choose) scrip for scrip roll-over, you must take any capital gain (or capital loss) from the CGT event A1 happening on the disposal of your AHL shares into account in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

18. If you do not choose (or cannot choose) scrip for scrip roll-over, you can treat the capital gain from the CGT event A1 happening as a discount capital gain, provided that the conditions of Subdivision 115-A are met.

Cost base and reduced cost base of Home Consortium Limited shares

19. If you do not choose (or cannot choose) scrip for scrip roll-over, the first element of the cost base and reduced cost base of the replacement HCL shares is equal to the market value of the AHL shares given in respect of acquiring the HCL share (subsections 110-25(2) and 110-55(2)). The market value of AHL shares is to be worked out at the time you acquired the HCL shares.

Acquisition date of Home Consortium Limited shares

20. If you did not choose (or could not choose) scrip for scrip roll-over for the CGT event A1 gain happening on the disposal of your AHL shares, the time of acquisition of the replacement HCL shares is the date the shares were issued to you by HCL (table item 2 of section 109-10).

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Scheme

21. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

The Aventus Group – Aventus Retail Property Fund

22. The Aventus Group comprises AHL and Aventus Capital Limited as the responsible entity (and trustee) for Aventus Retail Property Fund (ARPF). The shares in AHL are stapled to the units in ARPF and traded as a single stapled security (AVN) on the Australian Securities Exchange (ASX) (first listed in October 2018).

23. The Aventus Group is a fully-integrated owner, manager and developer of large format retail centres in Australia, with a portfolio of 19 centres. ARPF and its sub-trusts own large format retail centres and derive rent from third-party tenants. AHL and its subsidiaries (that include Aventus Capital Limited) provide trustee, responsible entity, investment management, development management and asset management services to ARPF in return for fees.

24. On 18 October 2021, the Aventus Group announced it had entered into a Scheme Implementation Deed (SID) to implement a merger with the Home Consortium Group (HomeCo) and Homeco Daily Needs Real Estate Investment Trust (HDN Trust).

Home Consortium Group

25. HomeCo previously comprised HCL and Home Consortium Developments Limited (HCDL). The shares in HCL were stapled to the shares in HCDL and traded as a single stapled security (HMC) on the ASX (first listed on 14 October 2019).

26. HomeCo is an owner, developer and manager of properties (including large format retail centres) in Australia and of property funds.

27. On 18 October 2021, HomeCo announced a proposal to simplify from a stapled to a single company structure by destapling and HCL acquiring all the shares in HCDL (in return for shares in HCL). This proposal was approved by HomeCo security holders and implemented on 24 December 2021.

28. Therefore, since 24 December 2021, HomeCo consists of HCL as the sole ASX-listed entity (together with its wholly-owned subsidiaries, including HCDL).

Homeco Daily Needs Real Estate Investment Trust

29. The HDN Trust was established by HCL in October 2020 (as a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*, with HMC Funds Management Limited as the responsible entity) and (pursuant to a Product Disclosure Statement dated 16 October 2020) was listed on the ASX on 23 November 2020 (with HCL retaining a unit-holding of approximately 26.6%). Refer to Class Ruling CR 2021/2 *Home Consortium Group – return of capital by way of in specie distribution*.

30. The HDN Trust invests in predominantly metro-located, convenience-based property assets, in particular non-discretionary retail, with a portfolio of 32 properties.

31. HCL also established the Healthco Healthcare and Wellness Real Estate Investment Trust (Healthco Trust) in September 2021 (as a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*, with HCW Funds

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Management Limited as the responsible entity) that (pursuant to a Product Disclosure Statement dated 2 August 2021) was listed on the ASX on 2 September 2021 (with HCL retaining a unit-holding of approximately 20%). The Healthco Trust invests in healthcare and wellness property assets.

32. HCL (via its wholly-owned subsidiaries HMC Funds Management Limited, HCW Funds Management Limited, Homeco Investment Management Pty Ltd and Homeco Property Management Pty Ltd) provides trustee, responsible entity, investment management and property management services to the HDN Trust and the Healthco Trust.

The Merger

33. As noted in paragraph 24 of this Ruling, on 18 October 2021 the Aventus Group announced it had entered into a SID to implement a merger with HomeCo and HDN Trust whereby the AVN securities were to be destapled, and pursuant to a 'Trust Scheme' and a 'Members Scheme' (respectively):

- all the units in ARPF (not already held by the HDN Trust) to be acquired by the HDN Trust, with the ARPF unitholders (holding units at the Scheme Record Date) to receive 2.2 HDN Trust units for each ARPF unit held (the Trust Scheme), and
- all the shares in AHL (not already held by HCL) to be acquired by HCL, with the AHL shareholders (holding shares at the Scheme Record Date) to receive either
 - Scrip Consideration of 0.038 HCL share for each AHL share held, or
 - Cash Consideration of 28.5 cents for each AHL share held,
 with each AHL shareholder to elect either Scrip Consideration for all of their AHL shares or Cash Consideration for all of their AHL shares (by lodging a valid election form by 20 January 2022). If no election is made they will receive Cash Consideration for all of their AHL shares. An AHL shareholder who is an Ineligible Foreign Securityholder will receive Cash Consideration for all of their AHL shares (the Members Scheme).

34. This Ruling deals with the Members Scheme and those AHL shareholders who received Scrip Consideration (0.038 HCL share for each AHL share) for all their AHL shares held at the Scheme Record Date (refer to Class Ruling CR 2022/25 *Aventus Group – exchange of units in Aventus Retail Property Fund for units in Homeco Daily Needs Real Estate Investment Trust – scrip for scrip roll-over*, which deals with the Trust Scheme).

35. The Aventus security holders approved the destapling of the AVN securities and both the Trust Scheme and Members Scheme at the ARPF unitholder and AHL shareholder meetings held on 25 January 2022.

36. The Scheme Record Date is 7 February 2022 and the Implementation Date for both schemes is 14 February 2022.

Other matters

37. AHL was incorporated after 20 September 1985 and all AHL shareholders acquired their shares after 20 September 1985 (meaning the condition in paragraph 124-780(3)(a) is satisfied).

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38. No AHL shareholder (original interest holder) is a significant stakeholder or common stakeholder for the arrangement (Members Scheme) (within the meaning of those terms as defined in section 124-783) and the replacement entity (HCL) will not make a choice under subsection 124-795(4) that the scrip for scrip roll-over is not available (meaning the conditions in paragraphs 124-780(3)(d) and (e) do not apply).

Commissioner of Taxation

23 March 2022

Status: **not legally binding**

Appendix – Explanation

❶ *This Explanation 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.*

Scrip for scrip roll-over

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

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

- an entity (shareholder) exchanges shares in one company for shares in another company (paragraph 124-780(1)(a))
- the exchange is in consequence of a single arrangement that (in this case) satisfies subsection 124-780((2A) (paragraph 124-780(1)(b))
- the conditions in subsection 124-780(3) are satisfied (paragraph 124-780(1)(c))
- if subsection 124-780(4) applies, the conditions in subsection 124-780(5) are satisfied (paragraph 124-780(1)(d)), and
- none of the exceptions for obtaining scrip for scrip roll-over in section 124-795 are applicable.

41. The Members Scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

Status: **not legally binding**

References

Related Rulings/Determinations:

CR 2021/2; CR 2022/25; TR 2006/10

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(1)(a)
 - ITAA 1997 124-780(1)(b)
 - ITAA 1997 124-780(1)(c)
 - ITAA 1997 124-780(1)(d)
 - ITAA 1997 124-780(2A)
 - ITAA 1997 124-780(3)
 - ITAA 1997 124-780(3)(a)
 - ITAA 1997 124-780(3)(d)
 - ITAA 1997 124-780(3)(e)
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-780(5)
 - ITAA 1997 124-783
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 855-25
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001 Ch 5C
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ATO references

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