

CR 2024/35 - Cirrus Networks Holdings Limited - scheme of arrangement



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Status: **legally binding**

Class Ruling

Cirrus Networks Holdings Limited – scheme of arrangement

❶ 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 shareholders in Cirrus Networks Holdings Limited (Cirrus) in relation to the scheme of arrangement where shareholders, in exchange for their shares in Cirrus, received cash or shares, or cash and shares, in Atturra Limited (Atturra) on 11 December 2023 (Implementation Date).
2. Details of this scheme are set out in paragraphs 30 to 46 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 held:
 - Cirrus shares registered on Cirrus' share register on 4 December 2023 (Record Date), and
 - your Cirrus shares on capital account – that is, your Cirrus shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).
5. This Ruling does not apply to anyone who is subject to the:
 - investment manager regime in Subdivision 842-I, or

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- taxation of financial arrangements rules in Division 230.

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 2023 to 30 June 2024.

Ruling

Disposal of your Cirrus Networks Holdings Limited shares – CGT event A1

7. CGT event A1 happened when you disposed of each of your Cirrus shares to Atturra Holdings Pty Ltd (BidCo) (section 104-10).

8. CGT event A1 happened on 11 December 2023 (Implementation Date) (paragraph 104-10(3)(b)).

Capital proceeds

9. The capital proceeds you received in respect of each Cirrus share you disposed of is the sum of the cash consideration and the market value of the proportion of the Atturra share you received (subsection 116-20(1)).

10. The market value of the proportion of the Atturra share you received is worked out as at the time of CGT event A1 happening.

11. The Commissioner accepts that the market value of each Atturra share at that time was \$0.8432227234.

Capital gain or capital loss

12. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Cirrus share exceeded the cost base of that share (subsection 104-10(4)). The capital gain is the amount of the excess.

13. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Cirrus share were less than the reduced cost base of that share (subsection 104-10(4)). The capital loss is the difference.

14. If you made a capital gain on disposing of your Cirrus shares, you can treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your Cirrus share on or before 10 December 2022 and the other conditions of Subdivision 115-A are met.

Foreign-resident shareholders generally disregard a capital gain or capital loss

15. You disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your Cirrus shares (section 855-10) if:

- you were a foreign resident or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)) that held Cirrus shares just before the Implementation Date, and

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- your Cirrus shares were not 'taxable Australian property' (in the manner described in paragraph 16 of this Ruling).
16. Your Cirrus shares were taxable Australian property if they were:
- used by you at any time in carrying on a business through a permanent establishment in Australia in the circumstances specified in table item 3 of section 855-15, or
 - a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident (table item 5 of section 855-15)).

Availability of scrip for scrip roll-over if a capital gain is made

17. Subject to the qualifications in paragraphs 18 and 19 of this Ruling, if you make a capital gain from the disposal of your Cirrus share, you may choose to obtain scrip for scrip roll-over for that gain (sections 124-780, 124-785 and 124-790). Scrip for scrip roll-over is not available if you made a capital loss.

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

19. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless your replacement Atturra shares were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

Consequences if scrip for scrip roll-over is chosen

20. If you choose scrip for scrip roll-over, the part of the capital gain from the disposal of your Cirrus share that is attributable to the receipt of Atturra shares is disregarded (subsections 124-785(1) and 124-790(1)).

21. Any part of the capital gain that is attributable to the receipt of cash is not disregarded because it is not the receipt of Atturra shares (subsection 124-790(1)).

22. If you choose scrip for scrip roll-over and you only received a proportion of an Atturra share, that is, you did not receive any cash consideration, your entire capital gain is disregarded (subsection 124-785(1)).

23. If you choose scrip for scrip roll-over, the first element of the cost base (or reduced cost base) of each Atturra share you received will be equal to the sum of the cost bases of your Cirrus shares (as reduced under subsection 124-785(3) for any cash consideration) divided by the number of replacement Atturra shares you received (subsections 124-785(2) and (4), and section 124-790).

24. For the purposes of determining your eligibility to make a discount capital gain, if you choose scrip for scrip roll-over, the date of acquisition of the replacement Atturra shares is taken to be the date you acquired your original shares in Cirrus (table item 2 of subsection 115-30(1)).

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Consequences if you do not choose scrip for scrip roll-over

25. If you do not, or cannot, choose scrip for scrip roll-over, you must account for any capital gain or capital loss from the disposal of your Cirrus shares 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).

26. If you make a capital gain where roll-over is not chosen, you can treat the capital gain as a discount capital gain if the conditions in Subdivision 115-A are met. In particular, the Cirrus shares you disposed of must have been acquired at least 12 months before the Implementation Date (section 115-25).

27. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of your replacement Atturra shares is equal to the market value of the Cirrus shares you exchanged in respect of acquiring the Atturra shares (subsections 110-25(2) and 110-55(2)), reduced by the proportion of the market value of the Cirrus shares that is reasonably attributable to the cash consideration of the capital proceeds you received (subsection 112-30(1)).

28. The market value of your Cirrus shares is worked out at the time you acquired the replacement shares in Atturra, which is on the Implementation Date (paragraph 110-25(2)(b) and subsection 110-55(2)). The Commissioner accepts that the market value of a Cirrus share at that time was \$0.8432227234.

29. If you do not, or cannot, choose scrip for scrip roll-over, you are taken to have acquired the Atturra shares on 11 December 2023 (table item 2 of section 109-10 and paragraph 104-35(5)(c)).

Scheme

30. 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.

Cirrus Networks Holdings Limited

31. Cirrus is an Australian-resident company, which was listed on the Australian Securities Exchange on 10 February 2004. Its operations include the provision of managed services and information technology solutions focused on designing, building and managing information technology infrastructure for enterprises, large corporations and government agencies.

32. On 4 December 2023 (Record Date), Cirrus had 930,006,385 ordinary shares on issue. Cirrus had no other classes of shares on issue.

Scheme of arrangement

33. On 10 September 2023, Cirrus and BidCo, a wholly owned subsidiary of Atturra, entered into a Scheme Implementation Deed for BidCo to acquire 100% of the share capital in Cirrus by way of a scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001*.

34. The scheme of arrangement was approved by Cirrus shareholders at a shareholders' meeting on 22 November 2023.

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35. Under the terms of the scheme of arrangement, shareholders had the option to elect to exchange their Cirrus shares for consideration in one of 4 ways, some of which were subject to a scale-back mechanism.

36. For the purposes of determining the total scheme consideration consisting of cash and Atturra shares, the implied value of a Cirrus share was \$0.063. The value of an Atturra share for the purposes of determining the number of Atturra shares to be issued as scheme consideration was agreed at \$0.8815. The finalised maximum cash consideration pool was \$44,568,422.69 and the maximum share consideration pool was 15,937,505 Atturra shares.

37. For shareholders who were considered ineligible foreign shareholders, any Atturra shares they would otherwise have been issued with were to be issued to a nominee who would sell them on their behalf and provide them with the net proceeds of sale.

38. On 11 December 2023 (Implementation Date), BidCo acquired Cirrus shares from Cirrus shareholders who received consideration in exchange for their shares in one of 4 ways, generally based on how they elected the consideration to be received.

Table 1: Consideration for each Cirrus share held

Election	Consideration for each Cirrus share held
Default consideration	\$0.0473 cash and 0.0179 Atturra shares
Maximum cash consideration	\$0.0489870540411358 cash and 0.0158967003510693 Atturra shares
Maximum share consideration	0.0715 Atturra shares
Split consideration	\$0.024493523491969 cash and 0.0436488903399914 Atturra shares

39. Unmarketable parcel shareholders who did not give an opt-in notice received cash of \$0.0630000081607397 for each Cirrus share held.

40. The aggregate consideration to be received for the disposal of Cirrus shares as outlined in paragraphs 37 to 39 of this Ruling was subject to being rounded up or down to the nearest whole number of shares or cents, as applicable.

41. On the Implementation Date, the 5-day volume-weighted average price for an Atturra share was \$0.8432227234.

Other matters

42. On the Record Date, 30,000,004 Cirrus shares were held by foreign shareholders with a relevant interest not exceeding 10%.

43. On the Record Date, the largest 20 shareholders (inclusive of nominees) held approximately 62.12% of all ordinary shares in Cirrus. The largest shareholder, a nominee, held 13.35% of the shares.

44. There were no significant stakeholders or common stakeholders in Cirrus or Atturra for the scheme of arrangement (for the purposes of section 124-783).

45. The Cirrus shareholders and BidCo dealt at arm's length in relation to the disposal and acquisition of the Cirrus shares.

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46. The sum of Cirrus' assets which are taxable Australian real property do not exceed the sum of the market values of its assets that are not taxable Australian real property.

Commissioner of Taxation

26 June 2024

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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.*

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Capital proceeds

47. The capital proceeds from a CGT event is the total of the money and the market value of any property received, or entitled to be received, (worked out at the time of the event happening) in respect of the event happening (subsections 116-20(1)(a) and (b)).

48. Cirrus shareholders received capital proceeds from CGT event A1 happening on the disposal of a Cirrus share of either cash consideration, the market value of a proportion of an Atturra share or a combination of both.

Example – capital proceeds for 100,000 Cirrus shares

49. *Peppa held 100,000 Cirrus shares.*

50. *The capital proceeds Peppa received for the disposal of the Cirrus shares held consists of one of the following:*

Table 2: Capital proceeds for each Cirrus share

Scheme consideration election	Capital proceeds
<i>Default consideration</i>	$\$4,730 + (1,790 \text{ Atturra shares} \times \$0.8432227234) = \$6,239.37$
<i>Maximum cash consideration</i>	$\$4,898.71 + (1,590 \text{ Atturra shares} \times \$0.8432227234) = \$6,239.43$
<i>Maximum share consideration</i>	$7,150 \text{ Atturra shares} \times \$0.8432227234 = \$6,029.04$
<i>Split consideration</i>	$\$2,449.35 + (4,365 \text{ Atturra shares} \times \$0.8432227234) = \$6,130.02$

Availability of scrip for scrip roll-over if a capital gain is made

51. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from the disposal of a share 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.

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52. 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 scheme that is the subject of this Ruling are:

- shares in one company are exchanged for shares in another company
- the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- the conditions for the roll-over under subsection 124-780(3) are satisfied
- further conditions in subsection 124-781(4), if applicable, are satisfied, and
- exceptions for the roll-over in section 124-795 are not applicable.

53. The scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

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References

Legislative references:

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|--|---|
| <ul style="list-style-type: none"> - ITAA 1997 102-5 - ITAA 1997 102-10 - ITAA 1997 104-10 - ITAA 1997 104-10(3)(b) - ITAA 1997 104-10(4) - ITAA 1997 104-35(5)(c) - ITAA 1997 104-165(3) - ITAA 1997 109-10 - ITAA 1997 110-25(2) - ITAA 1997 110-25(2)(b) - ITAA 1997 110-55(2) - ITAA 1997 112-30(1) - ITAA 1997 Subdiv 115-A - ITAA 1997 115-25 - ITAA 1997 115-30(1) - ITAA 1997 116-20(1) - ITAA 1997 116-20(1)(a) - ITAA 1997 116-20(1)(b) - ITAA 1997 Subdiv 124-M - ITAA 1997 124-780 | <ul style="list-style-type: none"> - ITAA 1997 124-780(2) - ITAA 1997 124-780(2A) - ITAA 1997 124-780(3) - ITAA 1997 124-781(4) - 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 - ITAA 1997 124-795(1) - ITAA 1997 124-795(2)(a) - ITAA 1997 Div 230 - ITAA 1997 Subdiv 842-I - ITAA 1997 855-10 - ITAA 1997 855-15 - ITAA 1997 977-50 - ITAA 1997 995-1(1) - Corporations Act 2001 Pt 5.1 |
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ATO references

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