


# ***CR 2024/65 - Prospa Group Limited - scheme of arrangement***

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Status: **legally binding**

## Class Ruling

# Prospa Group Limited – scheme of arrangement

### **① Relying on this Ruling**

This publication 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 Prospa Group Limited (Prospa) shareholders who exchanged their Prospa shares on 8 August 2024 (Implementation Date) for ordinary shares in PGL HoldCo Limited (PGL HoldCo) by way of a scheme of arrangement (Scheme).
2. Details of this scheme are set out in paragraphs 26 to 55 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 ordinary shares in Prospa (Prospa Shares) on 5 August 2024 (Record Date)
  - held your Prospa Shares on capital account for income tax purposes – that is, you did not hold your Prospa Shares as revenue assets (as defined in section 977-50) or trading stock (as defined in subsection 995-1(1)), and
  - disposed of your Prospa Shares under the Scheme in exchange for shares in PGL HoldCo.
5. This Ruling does not apply to you, if you:
  - acquired your Prospa Shares under an employee share plan that is an employee share scheme for the purposes of Division 83A and your deferred taxing point occurred on the Implementation Date, or
  - were subject to the taxation of financial arrangement rules in Division 230 in relation to the scheme outlined in paragraphs 26 to 55 of this Ruling.

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

6. The class of entities in paragraph 4 of this Ruling is referred to as 'Prosopa Shareholders'.

### **When this Ruling applies**

7. This Ruling applies from 1 July 2024 to 30 June 2025.

## **Ruling**

### **CGT event A1 happened on the disposal of your Prosopa Group Limited shares**

8. CGT event A1 happened when you disposed of your Prosopa Shares (subsection 104-10(1)).

9. The time of the CGT event A1 was on the Implementation Date (paragraph 104-10(3)(b)).

10. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Prosopa Share exceeded the cost base of that share. You made a capital loss if the capital proceeds from the disposal of your Prosopa Share were less than the reduced cost base of that share (subsection 104-10(4)).

11. The capital proceeds from CGT event A1 happening to each Prosopa Share is equal to the market value of the corresponding PGL HoldCo share you received in exchange for the disposal of that Prosopa Share (paragraph 116-20(1)(b)).

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

12. Subject to the qualifications in paragraphs 14 and 15 of this Ruling, if you are a resident of Australia and you made a capital gain from the disposal of your Prosopa Shares, you may choose to obtain scrip for scrip roll-over for that capital gain (sections 124-780 and 124-785).

13. If you were a 'foreign resident', as defined in subsection 995-1(1), just before the Implementation Date and your Prosopa shares were 'taxable Australian property', as defined in section 855-15, you can choose to obtain scrip for scrip roll-over to disregard a capital gain on the disposal of your Prosopa shares to BidCo (sections 124-780 and 124-785) if your PGL HoldCo shares were also taxable Australian property just after you acquired them (subsection 124-795(1)).

14. Any Prosopa Shareholder that is a significant stakeholder (as defined in section 124-783) to which section 124-782 applies must jointly choose to obtain scrip for scrip roll-over with PGL HoldCo (paragraph 124-781(3)(c)) and must notify PGL HoldCo in writing of the cost base of their original interests just before the disposal of their Prosopa Shares under the Scheme (paragraph 124-780(3)(e)).

15. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from a replacement PGL HoldCo share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

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**Consequences if you choose scrip for scrip roll-over**

***Capital gain is disregarded on disposal of your Prospa Group Limited shares***

16. If you choose scrip for scrip roll-over, you disregard the capital gain you made from CGT event A1 happening in respect of the disposal of your Prospa Shares (subsection 124-785(1)).

***Cost base and reduced cost base of PGL HoldCo Limited shares***

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

18. We accept that one reasonable method of attribution would be to calculate the first element of the cost base and reduced cost base of each replacement PGL HoldCo share by dividing the total cost bases of your Prospa Shares by the number of replacement PGL HoldCo shares you received.

***Acquisition date of corresponding PGL HoldCo Limited shares***

19. For the purposes of working out whether a future capital gain from your replacement PGL HoldCo shares is a 'discount capital gain', the PGL HoldCo shares you acquired in exchange for your Prospa Shares are taken to have been acquired (per table item 2 of subsection 115-30(1)):

- on the date you acquired, for CGT purposes, the corresponding Prospa Share involved in the roll-over, or
- the date you were deemed to have acquired the Prospa share if you have previously obtained roll-over relief in relation to your Prospa shares.

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

***Capital gain is not disregarded on disposal of your Prospa Group Limited shares***

20. If you do not, or cannot, choose scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your Prospa 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).

21. If you made a capital gain from CGT event A1 happening where scrip for scrip roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain if the conditions in Subdivision 115-A are met. In particular, the Prospa Shares you disposed of must have been acquired at least 12 months before the Implementation Date (section 115-25).

***Cost base and reduced cost base of corresponding PGL HoldCo Limited shares***

22. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement PGL HoldCo share you received is equal to the market value of the Prospa Shares you gave in respect of acquiring the PGL HoldCo share.

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23. The market value of the Prospa Share you gave is worked out as at the time you acquired the replacement PGL HoldCo share, which is on the Implementation Date (paragraph 110-25(2)(b) and subsection 110-55(2)).

### **Foreign-resident shareholders**

24. You disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your Prospa 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 Prospa shares just before the Implementation Date, and
- your Prospa shares were not taxable Australian property (in the manner described in paragraph 25 of this Ruling).

25. Your Prospa 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)).

## **Scheme**

26. 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.

### **Prospa Group Limited**

27. Prospa is an Australian public company that was incorporated on 18 April 2018.

28. Prospa is an online lender to small businesses in Australia and New Zealand.

29. Prospa was listed on the Australian Securities Exchange on 11 June 2019.

30. Prospa's business was previously carried on through Prospa Advance Pty Ltd (Prospa Advance) which was incorporated in 2012. When Prospa was listed on the Australian Securities Exchange, Prospa Advance shareholders exchanged their shares in Prospa Advance for shares in Prospa.

31. Prospa has one class of ordinary shares on issue. On the Implementation Date there were 164,736,513 ordinary shares in Prospa on issue.

32. Immediately before the commencement of the Scheme and up until the Implementation Date, Prospa had over 300 shareholders.

### **The Consortium and BidCo Group**

33. The consortium comprises a group of investors (Consortium) who agreed to work together on an exclusive basis to acquire Prospa through the Scheme.

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34. Salkbridge Pty Ltd (BidCo) is an unlisted Australian proprietary company wholly owned by PGL HoldCo.
35. PGL HoldCo is an unlisted Australian public company. PGL HoldCo is the ultimate holding company of BidCo.
36. BidCo and PGL HoldCo (together with any PGL HoldCo subsidiaries, referred to as BidCo Group) were established for the purpose of acquiring Prospa Shares under the Scheme.
37. Immediately before the Implementation Date, members of the Consortium that held 4.26% of Prospa Shares transferred their Prospa Shares to BidCo in exchange for PGL HoldCo Shares. This occurred on the same basis as the scrip consideration offered to Prospa Shareholders under the Scheme.
38. A member of the Consortium, holding 0.69% of shares in Prospa, elected to retain their Prospa Shares post the implementation of the Scheme.

#### **Scheme of arrangement**

39. On 27 February 2024, Prospa entered into a Scheme Implementation Deed (SID) with BidCo under which BidCo agreed to acquire all of the ordinary shares in Prospa (other than those held by a BidCo Group Member, as defined in the SID) by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.
40. The Scheme was approved by Prospa shareholders at the Scheme meeting on 16 July 2024.
41. Under the Scheme, Prospa Shareholders (other than Ineligible Foreign Shareholders or Excluded Shareholders, as defined in the SID) could elect to receive:
- 45c cash per Prospa Share (Cash Consideration), or
  - one ordinary share in PGL HoldCo for each Prospa Share held on 5 August 2024, being the Record Date (Scrip Consideration).
42. The Cash Consideration was the default consideration under the Scheme. Prospa Shareholders that did not validly elect to receive the Scrip Consideration, received Cash Consideration.

#### **Nominee arrangement for PGL HoldCo Limited shares**

43. Under the Scheme, Prospa Shareholders who elected to receive the Scrip Consideration agreed to be bound by the terms of the Nominee Deed, the PGL HoldCo Constitution and the PGL HoldCo Shareholders' Deed.
44. The PGL HoldCo Shareholders' Deed requires that PGL HoldCo has no more than 50 members.
45. To give effect to this requirement, PGL HoldCo appointed an independent third-party trustee to hold PGL HoldCo Shares on bare trust for Prospa Shareholders who elected to receive the Scrip Consideration.
46. Under this arrangement, each Prospa Shareholder is absolutely entitled to their PGL HoldCo shares as against the trustee for the purposes of section 106-50.
47. Prospa Shareholders who would hold at least 1 million PGL HoldCo Shares on the Implementation Date were entitled to direct PGL HoldCo to issue the PGL HoldCo Shares

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directly to the Prospa Shareholder rather than have their PGL HoldCo shares held through the Nominee arrangement.

### **Ineligible Shareholders**

48. Ineligible Foreign Shareholders received Cash Consideration under the Scheme.
49. An Ineligible Foreign Shareholder was a Prospa Shareholder whose address as shown on the Prospa Share Register is a place outside Australia or New Zealand, unless PGL HoldCo determined that it was lawful and not unduly onerous or impracticable to issue that shareholder with Scrip Consideration under the Scheme.
50. BidCo and members of the Consortium who were Prospa Shareholders were excluded from participating in the Scheme.

### **Other Matters**

51. All parties that participated in the Scheme dealt at arm's length for the purposes of subsection 124-780(4).
52. Immediately before the commencement of the Scheme on 26 February 2024 and up until the Implementation Date, 20 or fewer individuals (together with their associates) did not hold at least 75% of the ordinary shares in Prospa (with Prospa not having concentrated ownership (Section 124-810(3))).
53. No non-resident (either alone or together with their associates (as defined in section 318 of the *Income Tax Assessment Act 1936*)) beneficially held more than 10% of the shares in Prospa.
54. Less than 50% of the total market value of assets held by Prospa are 'taxable Australian real property' as defined in section 855-20.
55. PGL HoldCo did not make a choice to deny the scrip for scrip roll-over to Prospa Shareholders under subsection 124-795(4).

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**Commissioner of Taxation**

9 October 2024

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## References

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### *Legislative references:*

- ITAA 1936 318
  - ITAA 1997 Div 83A
  - ITAA 1997 102-5
  - ITAA 1997 102-10
  - ITAA 1997 104-10(1)
  - ITAA 1997 104-10(3)(b)
  - ITAA 1997 104-10(4)
  - ITAA 1997 104-165(3)
  - ITAA 1997 106-50
  - ITAA 1997 110-25(2)(b)
  - ITAA 1997 110-55(2)
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 115-25
  - ITAA 1997 115-30(1)
  - ITAA 1997 116-20(1)(b)
  - ITAA 1997 124-780
  - ITAA 1997 124-780(3)(e)
  - ITAA 1997 124-780(4)
  - ITAA 1997 124-781(3)(c)
  - ITAA 1997 124-782
  - ITAA 1997 124-783
  - ITAA 1997 124-785
  - ITAA 1997 124-785(1)
  - ITAA 1997 124-785(2)
  - ITAA 1997 124-785(4)
  - ITAA 1997 124-795(1)
  - ITAA 1997 124-795(2)(a)
  - ITAA 1997 124-795(4)
  - ITAA 1997 124-810(3)
  - ITAA 1997 Div 230
  - ITAA 1997 855-10
  - ITAA 1997 855-15
  - ITAA 1997 855-20
  - 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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