


CR 2006/52 - Income tax: scrip for scrip roll-over: exchange of ordinary shares in Royal Dutch Petroleum Company for ordinary shares in Royal Dutch Shell plc

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Class Ruling

Income tax: scrip for scrip roll-over: exchange of ordinary shares in Royal Dutch Petroleum Company for ordinary shares in Royal Dutch Shell plc

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Withdrawal	12
Scheme	13
Ruling	26
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	38
Appendix 2:	
<i>Detailed contents list</i>	100

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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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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 the following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997):

- section 104-10;
- section 106-50;
- subsection 110-25(2);
- subsection 116-20(1);
- Subdivision 124-M; and
- subsection 960-50(6).

Class of entities

3. The class of entities to which this Ruling applies is the ordinary shareholders of Royal Dutch Petroleum Company who:
- were residents of Australia within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on 20 July 2005, being the time the Royal Dutch Shell plc public exchange offer and the acceptances of that offer became unconditional;
 - held their Royal Dutch Petroleum Company ordinary shares on capital account;
 - tendered their Royal Dutch Petroleum Company ordinary shares for acceptance into the Royal Dutch Shell plc public exchange offer during the Royal Dutch Shell plc offer acceptance period (not the subsequent acceptance period), and had their shares exchanged for either ordinary shares in Royal Dutch Shell plc or American depositary receipts representing a number of ordinary shares in Royal Dutch Shell plc under the terms of that offer; and
 - were not 'significant stakeholders' within the meaning of that expression in Subdivision 124-M of the ITAA 1997.

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 13 to 25 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 20 July 2005. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

12. This Ruling is withdrawn immediately after 30 June 2006. However, the Ruling continues to apply after its withdrawal in respect of the relevant provisions ruled upon, to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

Scheme

13. The scheme that is the subject of this Ruling is described below. The description is based on, and includes, the following documents:

- Class Ruling application dated 6 May 2005 from Allens Arthur Robinson (AAR) requesting the Commissioner to make a Class Ruling in relation to the capital gains tax consequences for ordinary shareholders of Royal Dutch Petroleum Company who exchange their shares under the arrangement described below;

- Annexure A to the Class Ruling application – background information;
- Supplementary submissions from Allens Arthur Robinson dated 24 May 2005 and 4 August 2005;
- Correspondence from Allens Arthur Robinson dated 23 June 2005;
- Royal Dutch Offer Document and Listing Particulars;
- Australian Supplement to the Royal Dutch Offer Document and Listing Particulars;
- US Prospectus;
- Australian Supplement to the US Prospectus; and
- Email from AAR dated 3 April 2006.

14. The scheme that is the subject of this Ruling involves a public exchange offer by Royal Dutch Shell plc (RDS) to acquire all of the ordinary shares in Royal Dutch Petroleum Company (RD) that were on issue at the start of the offer period. The scheme was part of a restructuring that saw the two parent companies of the Shell group, RD and The Shell Transport and Trading Company plc (STT), replaced by a single parent company in RDS.

15. The RD ordinary shares are issued in three forms:

- in registered form and registered on the share register kept by RD in The Hague (RD Hague shares);
- in bearer form and either held through the book-entry system of Euroclear Nederland or represented by share certificates to bearer (RD bearer shares); and
- in registered form and registered on the share register kept by RD in New York (RD New York shares).

16. The RD ordinary shares are voting shares for the purposes of section 9 of the *Corporations Act 2001*.

17. Under the RDS offer, the holders of RD ordinary shares received the following RDS securities:

- each RD Hague share or RD bearer share was exchanged for two 'A' class ordinary shares in RDS (RDS A shares); and
- each RD New York share was exchanged for one 'A' class American depository receipt (ADR) in RDS (RDSA ADR).

18. Each RDS A ADR is a certificate evidencing a specific number of American depository shares. Each American depository share represents two RDS A shares which are held by a custodian.

19. The holding of the ADRs is governed by a depositary agreement between RDS, the depositary and each holder of a RDS A ADR. Under the terms of that agreement, an ADR holder may, with some exceptions, cancel the RDS A ADRs and withdraw the underlying RDS A shares at any time.

20. The RDS offer acceptance period began on 20 May 2005 and ended on 18 July 2005. The offer was subject to a number of conditions. AAR have advised that it has received Dutch legal advice that under Dutch law, the conditions to the RDS offer, as well as the conditions to the acceptance of the RDS offer, are regarded as conditions precedent to the formation of a contract. The RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005. As a result of acceptances of the RDS offer tendered during the RDS offer acceptance period, RDS became the owner of more than 80% of the voting shares in RD.

21. RD also had 1,500 priority shares on issue which also constituted voting shares for the purposes of section 9 of the *Corporations Act 2001*. Priority shares had distribution entitlements in priority to distributions to holders of RD ordinary shares and also had a greater par value than the RD ordinary shares.

22. A proposal to buy back the priority shares was approved at the RD annual general meeting on 28 June 2005. The RD shareholders also approved amendments to the articles of association of RD to abolish the priority shares as a separate class of shares. As a result of the amendments to the articles of association of RD the priority shares were converted into RD ordinary shares subsequent to their buy back. This conversion took place on 4 July 2005.

23. From the time of the conversion, the converted ordinary shares held by RD did not constitute voting shares for the purposes of section 9 of the *Corporations Act 2001* as under the Dutch Civil Code, shares in a company which are held by that company cannot be voted on.

24. As at the commencement of the offer period, the shareholders in RDS were Shell RDS Holding B.V., Shell Petroleum N.V. and Euroclear Nederland. The shares owned by Euroclear Nederland were held for ABN Amro which held these shares for Shell RDS Holding B.V. who were holding them on behalf of RD ordinary shareholders. AAR have advised that Shell RDS Holdings B.V. did not beneficially own all of the shares in RDS.

25. RD had at least 300 members just before the time of the offer by RDS. Both RD and RDS were not 'residents of Australia' within the meaning of that expression in subsection 6(1) of the ITAA 1936.

Ruling

Time of CGT event

26. CGT event A1 in section 104-10 of the ITAA 1997 happened as a result of a RD ordinary shareholder disposing of each of their shares to RDS.

27. The event happened at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005: subsection 104-10(3) of the ITAA 1997.

28. A RD ordinary shareholder will make a capital gain from CGT event A1 happening if the capital proceeds for a RD ordinary share exceeds its cost base. The shareholder will make a capital loss if those capital proceeds are less than the share's reduced cost base: subsection 104-10(4) of the ITAA 1997.

Capital proceeds

29. The capital proceeds for each RD Hague share or RD bearer share is the market value of two RDS A shares at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005: subsection 116-20(1) of the ITAA 1997. The market value of a RDS A share is to be translated to Australian currency at the daily foreign exchange rate for Europe on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997.

30. The capital proceeds for each RD New York share is the market value of a RDS A ADR at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005: subsection 116-20(1) of the ITAA 1997. The market value of a RDS A ADR is to be translated to Australian currency at the daily foreign exchange rate for the USA on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997.

Availability of scrip for scrip roll-over

31. A RD ordinary shareholder, other than one who is a joint holder of a RD New York share, who makes a capital gain from CGT event A1 happening in relation to a RD ordinary share they acquired on or after 20 September 1985 can choose scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 provided:

- RDS was not a member of a wholly-owned group of which another company was the ultimate holding company just before it first increased the percentage of voting shares it owned in RD under the offer; and
- any capital gain that could be made upon a future CGT event happening in relation to a replacement share in RDS would not be disregarded (except because of a roll-over).

32. Where a RD ordinary shareholder chooses roll-over in respect of a RD ordinary share, the capital gain arising from the disposal of that share is disregarded.

33. A joint holder of a RD New York share cannot choose scrip for scrip roll-over as they will not satisfy the requirement for roll-over that their RD share be exchanged for a replacement share in RDS.

Cost base of RDS A shares and RDS A ADRs

34. The first element of the cost base and reduced cost base of a RDS A share issued in relation to a RD Hague share or a RD bearer share is:

- if scrip for scrip roll-over is chosen for the RD Hague share or RD bearer share, an amount equal to half the cost base or reduced cost base of the RD Hague share or RD bearer share: subsection 124-785(2) of the ITAA 1997;
- if the RD Hague share or RD bearer share was acquired by the RD ordinary shareholder before 20 September 1985, an amount equal to the market value of the RDS A share just after the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005: subsection 124-800(1) of the ITAA 1997; or
- in all other cases, an amount equal to half the market value of the RD Hague share or RD bearer share at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005: subsection 110-25(2) of the ITAA 1997.

35. Where the first element of the cost base and reduced cost base of a RDS A share is worked out by having regard to the market value of either a RDS A share, a RD Hague share or a RD bearer share, that market value is to be translated to Australian currency at the daily foreign exchange rate for Europe (Euro) on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997.

36. The first element of the cost base and reduced cost base of a RDS A ADR issued in relation to a RD New York share is:

- if scrip for scrip roll-over is chosen for the RD New York share, an amount equal to the cost base or reduced cost base of the RD New York share: subsection 124-785(2) of the ITAA 1997;
- if the RD New York share was acquired by the RD ordinary shareholder before 20 September 1985, an amount equal to the market value of the RDS A ADR just after the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005: subsection 124-800(1) of the ITAA 1997; or

- in all other cases, an amount equal to the market value of the RD New York share at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005: subsection 110-25(2) of the ITAA 1997.

37. Where the first element of the cost base and reduced cost base of a RDS A ADR is worked out by having regard to the market value of either a RDS A ADR or a RD New York share, that market value is to be translated to Australian currency at the daily foreign exchange rate for the USA on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997.

Commissioner of Taxation

21 June 2006

Appendix 1 – Explanation

Time of CGT event

38. CGT event A1 in section 104-10 of the ITAA 1997 happens if there is a change in the ownership of an asset from one entity to another. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs.

39. The time when CGT event A1 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain.

40. Taxation Determination TD 2002/4 Income tax: capital gains: what is the first element of the cost base and reduced cost base of a share in a company you acquire in exchange for a share in another company in a takeover or merger?, states at paragraph 7:

... if an offer from a 'bidder' company for shares in a 'target' company is one which is subject to a condition precedent to the formation of a contract, the contract does not come into existence until the condition is satisfied.

41. RD ordinary shareholders are taken to have disposed of their ordinary shares when they entered into a contract with RDS to dispose of their shares. As AAR have advised that it has received Dutch legal advice that the conditions to the RDS offer, as well as the conditions to the acceptance of the RDS offer, are regarded as conditions precedent to the formation of a contract under Dutch law, no contract for the disposal of a RD ordinary share was entered into before those conditions were satisfied. CGT event A1 therefore happened at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005.

Capital proceeds

42. Subsection 116-20(1) of the ITAA 1997 provides that the capital proceeds from a CGT event are the total of the money and the market value of any property received or entitled to be received in respect of the event happening. Where property is received as capital proceeds, its market value is to be worked out as at the time of the CGT event.

43. Therefore, in order to determine the capital proceeds from the disposal of a RD Hague share or a RD bearer share, it is necessary to ascertain the market value of two RDS A shares at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005. The market value of a RDS A ADR would also need to be ascertained at that time in order to determine the capital proceeds from the disposal of a RD New York share.

44. To facilitate practical compliance, the Commissioner accepts that the market value of a RDS A share or a RDS A ADR at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005 can be determined as follows:

Share	Value
RDS A share	*€25.40 being the closing price of an RDS A share on Euronext Amsterdam on 20 July 2005
RDS A ADR	*US\$62.04 being the closing price of an RDS A ADR on the New York Stock Exchange on 20 July 2005

*If the trading values over the course of the day vary significantly, closing price should be substituted with the average trade-weighted price for the share over the day.

45. The market value of a RDS A share is to be translated to Australian currency at the daily foreign exchange rate for Euro on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997. The exchange rate published on the ATO website for that day is 0.6304.

46. The market value of a RDS A ADR is to be translated to Australian currency at the daily foreign exchange rate for the USA on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997. The exchange rate published on the ATO website for that day is 0.7543.

Availability of scrip for scrip roll-over

47. Scrip for scrip roll-over enables a shareholder to disregard a capital gain they make from a share that is disposed of as part of a corporate restructure if the shareholder receives in exchange a replacement share.

48. The capital gain is disregarded completely if the only capital proceeds the shareholder receives is a replacement share. The roll-over provides that the cost base and reduced cost base of the replacement share is based on the cost base and reduced cost base of the original share at the time of the roll-over.

49. Subdivision 124-M of the ITAA 1997 contains a number of conditions for, and exceptions to, the eligibility of a shareholder to choose scrip for scrip roll-over. Below is an outline of the main conditions and exceptions which are relevant to the circumstances of the arrangement that is the subject of this Ruling.

50. Subparagraph 124-780(1)(a)(i) of the ITAA 1997 requires an entity (a RD ordinary shareholder) to exchange a share in a company for a share in another company.

51. RD ordinary shareholders who exchanged their RD Hague shares or their RD bearer shares for RDS A shares under the RDS offer satisfy this requirement.

52. RD ordinary shareholders who exchanged their RD New York shares for RDS A ADRs under the RDS offer also satisfy this requirement provided they did not hold their RD New York shares jointly.

53. While single holders of RD New York shares received RDS A ADRs and not RDS A shares, they are still taken to have exchanged a share for a share for the purposes of this requirement as they are absolutely entitled to the RDS A shares which the RDS A ADRs they hold represent. Where a beneficiary of a trust is absolutely entitled to a CGT asset as against the trustee of a trust, section 106-50 of the ITAA 1997 treats acts done by the trustee, being in this case the receipt of the RDS A shares, as if they had been done by the beneficiary.

54. Single holders of RD New York shares are considered to be absolutely entitled to the RDS A shares which the RDS A ADRs they hold represent because, under the terms of the depositary agreement which governs the holding of the ADRs, an ADR holder may, with some exceptions, cancel the RDS A ADRs and withdraw the underlying RDS A shares at any time.

55. A joint holder of RD New York shares cannot be absolutely entitled to the RDS A shares which the RDS A ADRs they hold represent as a joint holder cannot call for the RDS A shares to be transferred to them as they are not entitled to the whole of those shares. As such, a joint holder of RD New York shares does not satisfy this requirement as they have exchanged a share for an interest in a trust.

56. Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an entity (RD – the original entity) be exchanged in consequence of a single arrangement that results in another entity (RDS – the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (RD).

57. In the context of the scrip for scrip roll-over provisions, the offer to RD ordinary shareholders formed part of a single arrangement.

58. The arrangement resulted in RDS becoming the owner of 80% or more of the voting shares in RD.

59. Paragraphs 124-780(1)(b) and 124-780(2)(b) of the ITAA 1997 require that the arrangement be one in which at least all owners of voting shares in the original entity (RD) could participate.

60. Both the RD ordinary shares and the RD priority shares constituted voting shares for the purposes of section 9 of the *Corporations Act 2001*. As the owners of priority shares were not entitled to tender their shares for acceptance into the RDS offer, whether this requirement is satisfied is dependent on what constitutes the 'single arrangement' for the purposes of paragraph 124-780(1)(b) of the ITAA 1997.

61. Paragraph 11.23 of the Explanatory Memorandum to the New Business Tax System (Miscellaneous) Bill (No. 2) 2000 states that what constitutes a single arrangement is a question of fact and details a number of factors that are relevant to determining whether what takes place is part of a single arrangement. These include, but are not limited to:

whether there is more than one offer or transaction, whether aspects of an overall transaction occur contemporaneously, and the intention of the parties in all the circumstances as evidenced by objective facts.

62. Viewed objectively, the Commissioner considers that the single arrangement in this case encompasses all transactions that took place throughout the acceptance period for the offer. This includes the buy back of the RD priority shares.

63. As a result, this requirement is satisfied as all owners of voting shares were able to participate in the arrangement. All owners of RD priority shares were able to participate as they were able to have their shares bought back by RD. All owners of RD ordinary shares were able to participate as they were able to tender their shares for acceptance into the RDS offer.

64. Paragraphs 124-780(1)(b) and 124-780(2)(c) of the ITAA 1997 require that the arrangement be one in which participation is available on substantially the same terms for all of the owners of interests of a particular type in the original entity (RD).

65. Having regard to the differences between the rights that attached to the RD priority shares and the rights that attached to the RD ordinary shares, it is considered that the RD priority shares constituted a different type of interest to the RD ordinary shares for the purposes of paragraph 124-780(2)(c) of the ITAA 1997.

66. Each owner of a RD priority share participated in the arrangement on the same terms as the terms of the buyback were the same for all owners of RD priority shares.

67. Each owner of a RD ordinary share also participated in the arrangement on the same terms. An owner of a RD New York share received as consideration under the offer a RDS A ADR rather than two RDS A shares does not prevent participation in the arrangement being on substantially the same terms for all RD ordinary shareholders as each RDS A ADR represents two RDS A shares. Further, under the terms of the depositary agreement which governs the holding of the ADRs, an ADR holder may, with some exceptions, cancel the RDS A ADRs and withdraw the underlying RDS A shares at any time.

68. As a result, this requirement is satisfied as each shareholder within each type of interest (ordinary or priority) was able to participate in the arrangement on substantially the same terms.
69. Paragraphs 124-780(1)(c) and 124-780(3)(a) of the ITAA 1997 require the original interest holder (a RD ordinary shareholder) to have acquired its original interest (a RD ordinary share) on or after 20 September 1985.
70. This condition was satisfied by a RD ordinary shareholder in relation to the ordinary shares they acquired on or after 20 September 1985. Paragraph 31 of this Ruling limits this Ruling in this regard.
71. Paragraphs 124-780(1)(c) and 124-780(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a RD ordinary shareholder) would make a capital gain from a CGT event happening in relation to the original interest (a RD ordinary share).
72. Whether a RD ordinary shareholder would, apart from the roll-over, make a capital gain from the disposal of any of its ordinary shares to RDS is a question of fact that is dependent on the specific circumstances of each shareholder – in particular on the cost base of each RD ordinary share and the value of the capital proceeds received. Paragraph 31 of this Ruling limits this Ruling in this regard.
73. Paragraphs 124-780(1)(c) and 124-780(3)(c) of the ITAA 1997 require that the replacement interest is in the acquiring entity (RDS) or, where the acquiring entity is a member of a wholly-owned group, the ultimate holding company of that group.
74. This requirement is satisfied provided that RDS was not a member of a wholly-owned group of which another company was the ultimate holding company just before it first increased the percentage of voting shares it owned in RD under the offer.
75. AAR have advised that RDS was not a member of a wholly-owned group of which another company was the ultimate holding company at the commencement of the offer period as Shell RDS Holding B.V. did not beneficially own all of the shares in RDS. This requirement is therefore satisfied provided Shell RDS Holding B.V. did not beneficially own all of the shares in RDS just before RDS first increased the percentage of voting shares it owned in RD under the offer. Paragraph 31 of this Ruling limits this Ruling in this regard.
76. Paragraphs 124-780(1)(c) and 124-780(3)(d) of the ITAA 1997 require that the original interest holder (a RD ordinary shareholder) chooses to obtain the roll-over.
77. Whether a RD ordinary shareholder chooses roll-over is a question of fact.

78. Subsection 124-780(4) of the ITAA 1997 provides that conditions specified in subsection (5) must be satisfied if the original interest holder (a RD ordinary shareholder) and the acquiring entity (RDS) did not deal with each other at arm's length and:

- neither the original entity (RD) nor the replacement entity (RDS) had at least 300 members just before the arrangement started: paragraph 124-780(4)(a) of the ITAA 1997; or
- the original interest holder (a RD ordinary shareholder), the original entity (RD) and the acquiring entity (RDS) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b) of the ITAA 1997.

79. Paragraph 124-780(4)(a) of the ITAA 1997 does not apply as RD had more than 300 members just before the arrangement started. Section 124-810 of the ITAA 1997 also does not apply to RD as its ownership was not concentrated in the manner contemplated by that section.

80. Paragraph 124-780(4)(b) of the ITAA 1997 does not apply because no RD ordinary shareholder was a member of a linked group (within the meaning of section 170-260 of the ITAA 1997) along with RD and RDS just before the arrangement started.

Exceptions to obtaining scrip for scrip roll-over

81. Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a RD ordinary shareholder) might make from their replacement interest (a RDS A share or a RDS A ADR) would be disregarded.

82. This exception may apply if, for example, the RDS A shares or the RDS A ADRs are held as trading stock. Paragraph 31 of this Ruling limits this Ruling in this regard.

83. Paragraph 124-795(2)(b) of the ITAA 1997 provides that the roll-over is not available if the original interest holder (a RD ordinary shareholder) and the acquiring entity (RDS) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a RD share) and the acquiring entity is a foreign resident.

84. This exception does not apply as no RD ordinary shareholder was a member of the same wholly-owned group as RDS.

85. Subsection 124-795(4) of the ITAA 1997 provides that the roll-over is not available if, subject to other conditions, the original entity (RD) was not an Australian resident and did not have at least 300 members just before the arrangement started.

86. This exception does not apply as RD had more than 300 members just before the arrangement started.

Cost base of RDS A shares and RDS A ADRs***Scrip for scrip roll-over chosen***

87. Where an entity chooses scrip for scrip roll-over in relation to the exchange of a share for another share, the first element of the cost base of the replacement share is calculated by reasonably attributing to it the cost base (or part of it) of the original share for which it was exchanged: subsection 124-785(2) of the ITAA 1997. The reduced cost base of the replacement interest is worked out similarly: subsection 124-785(4) of the ITAA 1997.

88. As each RD Hague share and RD Bearer share were exchanged for two RDS A shares under the RDS offer, it is considered reasonable that the first element of the cost base and reduced cost base of each RDS A share equal half the cost base and reduced cost base of the RD Hague share or RD Bearer share for which it was exchanged.

89. As each RD New York share was exchanged for one RDS A ADR under the RDS offer, it is considered reasonable that the first element of the cost base and reduced cost base of each RDS A ADR equal the cost base and reduced cost base of the RD New York share for which it was exchanged.

Scrip for scrip roll-over not chosen

90. Where an entity does not choose scrip for scrip roll-over in relation to the exchange of a share for another share, the calculation of the first element of cost base and reduced cost base of the replacement share differs depending on whether the original share was acquired before 20 September 1985.

Pre-CGT original share

91. Where the original share was acquired before 20 September 1985, the replacement share will have a first element of cost base and reduced cost base equal to its market value just after it was acquired: subsection 124-800(1) of the ITAA 1997.

92. As a result, where a RD ordinary shareholder acquired their RD ordinary share before 20 September 1985, the first element of the cost base and reduced cost base of the replacement RDS A share or RDS A ADR is its market value just after the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005.

93. To facilitate practical compliance, the Commissioner accepts the values set out in paragraph 44 of this Ruling as representing the market value of a RDS A share or a RDS A ADR just after the time of their acquisition on 20 July 2005. The market value of a RDS A share or a RDS A ADR is to be translated to Australian currency in accordance with the guidelines set out in paragraphs 45 and 46 of this Ruling.

Post-CGT original share

94. Where the original share was acquired on or after 20 September 1985, the first element of the cost base and reduced cost base of the replacement share is the total of the money that is paid, or required to be paid, in respect of acquiring it and the market value of any other property given, or required to be given, in respect of acquiring it. Where property is given in relation to its acquisition, the market value of the property is to be worked out as at the time of the acquisition: subsection 110-25(2) of the ITAA 1997.

95. As each RD Hague share and RD Bearer share were exchanged for two RDS A shares under the RDS offer, the first element of the cost base and reduced cost base of a RDS A share is equal to half the market value of the RD Hague share or the RD bearer share at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005.

96. As each RD New York share was exchanged for one RDS A ADR under the RDS offer, the first element of the cost base and reduced cost base of a RDS A ADR is equal to the market value of the RD New York share at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005.

97. To facilitate practical compliance, the Commissioner accepts that the market value of a RD Hague share, a RD bearer share or a RD New York share at the time the RDS offer and the acceptances of the RDS offer became unconditional on 20 July 2005 can be determined as follows:

Share	Value
RD Hague share	*€50.75 being the closing price of a RD ordinary share on Euronext Amsterdam on 20 July 2005
RD bearer share	*€50.75 being the closing price of a RD ordinary share on Euronext Amsterdam on 20 July 2005
RD New York share	*US\$62.04 being the closing price of an RD New York share on the New York Stock Exchange on 20 July 2005

*If the trading values over the course of the day vary significantly, closing price should be substituted with the average trade-weighted price for the share over the day.

98. The market value of a RD ordinary share is to be translated to Australian currency at the daily foreign exchange rate for Euro on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997. The exchange rate published on the ATO website for that day is 0.6304.

99. The market value of a RD New York share is to be translated to Australian currency at the daily foreign exchange rate for the USA on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997. The exchange rate published on the ATO website for that day is 0.7543.

Appendix 2 – Detailed contents list

100. Below is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Withdrawal	12
Scheme	13
Ruling	26
Time of CGT event	26
Capital proceeds	29
Availability of scrip for scrip roll-over	31
Cost base of RDS A shares and RDS A ADRs	34
Appendix 1 – Explanation	38
Time of CGT event	38
Capital proceeds	42
Availability of scrip for scrip roll-over	47
Exceptions to obtaining scrip for scrip roll-over	81
Cost base of RDS A shares and RDS A ADRs	87
<i>Scrip for scrip roll-over chosen</i>	87
<i>Scrip for scrip roll-over not chosen</i>	90
<i>Pre-CGT original share</i>	91
<i>Post-CGT original share</i>	94
Appendix 2 – Detailed contents list	100

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2006/53; CR 2006/54;
CR 2006/55; CR 2006/56;
TD 2002/4

Subject references:

- capital proceeds
- CGT event
- cost base
- ordinary share
- replacement interest
- resident
- roll-over
- roll-over relief
- scrip for scrip
- share
- shareholder

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(4)
- ITAA 1997 106-50
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- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780(1)(a)(i)
- ITAA 1997 124-780(1)(b)

- ITAA 1997 124-780(1)(c)
- ITAA 1997 124-780(2)(a)
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- ITAA 1997 124-780(3)(a)
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- Corporations Act 2001 9
- Copyright Act 1968
- TAA 1953
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ATOlaw topic: Income Tax ~ Capital Gains Tax ~ CGT event A1 -
disposal of a CGT asset
Income Tax ~ Capital Gains Tax ~ capital proceeds
Income Tax ~ Capital Gains Tax ~ roll-overs - scrip for
scrip
Income Tax ~ Capital Gains Tax ~ cost base and
reduced cost base