


CR 2022/104 - Telstra Corporation Limited - top hat restructure

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Status: **legally binding**

Class Ruling

Telstra Corporation Limited – top hat restructure

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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	5
Ruling	6
Scheme	23
Appendix – Explanation	51

What this Ruling is about

1. This Ruling sets out the income tax consequences of the corporate restructure implemented by Telstra Corporation Limited (Telstra) on 31 October 2022 (Implementation Date) (the Top Hat Restructure) for the former holders of ordinary shares in Telstra (Telstra Shares). In particular, this Ruling confirms whether former holders of Telstra Shares will be eligible for roll-over relief under Division 615 of the *Income Tax Assessment Act 1997* in relation to the Top Hat Restructure, having received ordinary shares in Telstra Group Limited (ACN 650 620 303) (New Telstra Corp) (New Telstra Corp Shares).
2. Details of this scheme are set out in paragraphs 23 to 50 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 are a former holder of Telstra Shares who:
 - participated in the Top Hat Restructure that is the subject of this Ruling
 - was registered on the Telstra Share register on 24 October 2022 (Record Date), being the date for determining eligibility to participate in the Top Hat Restructure

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- is a resident of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) who held your Telstra Shares
 - on capital account account for tax purposes and hold your New Telstra Corp Shares on capital account
 - as trading stock for tax purposes and hold your New Telstra Corp Shares as trading stock
 - as revenue assets for tax purposes and hold your New Telstra Corp Shares as revenue assets, or
- a foreign resident within the meaning of subsection 995-1(1) who
 - at the time of the Top Hat Restructure, held your Telstra Shares (which are not taxable Australian property within the meaning of section 855-15) on capital account, and
 - is not an Ineligible Foreign Shareholder as defined on page 143 of the Telstra Corporation Limited: Scheme Booklet dated 23 August 2022 (the Scheme Booklet)
- is not a temporary resident of Australia within the meaning of the term 'temporary resident' in subsection 995-1(1)
- acquired your Telstra Shares after 19 September 1985, and
- is not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Telstra Shares.

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

When this Ruling applies

5. This Ruling applies to the 2022–23 income year, in which the Top Hat Restructure occurred.

Ruling

Disposal of Telstra Corporation Limited Shares – CGT event A1

6. CGT event A1 happened when you disposed of your Telstra Shares to New Telstra Corp (subsection 104-10(2)).
7. The time of CGT event A1 was on the Implementation Date (paragraph 104-10(3)(b)).
8. You received one New Telstra Corp Share for each Telstra Share you held prior to the Top Hat Restructure. Therefore, the capital proceeds from the CGT event that happened to each Telstra Share are equal to the market value of the New Telstra Corp Share that you were given as at the Implementation Date (subsection 116-20(1)).
9. You made a capital gain from CGT event A1 occurring to your Telstra Share if the capital proceeds from its disposal were more than the cost base of the Telstra Share. You made a capital loss if the capital proceeds were less than the reduced cost base of the Telstra Share (subsection 104-10(4)).

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Resident shareholders – roll-over under Division 615

10. A disposal of Telstra Shares in exchange for a whole number of New Telstra Corp Shares (and nothing else), as described in section 615-5, happened when the Top Hat Restructure was implemented.

11. You will be taken to have chosen to obtain the roll-over under Division 615 because immediately before the completion time, Telstra (the original entity) was the head company of a consolidated group, and immediately after the completion time, New Telstra Corp (the interposed company) is the head company of the group (subsection 615-5(2)).

Resident shareholders holding shares on capital account

12. Any capital gain or capital loss you made in respect of the disposal of the Telstra Shares will be disregarded (sections 615-10 and 615-40, and subsection 124-15(2)).

13. The first element of the cost base and reduced cost base of each New Telstra Corp Share you received is worked out by dividing the total cost bases of the Telstra Shares you disposed under the Top Hat Restructure by the number of New Telstra Corp Shares you received under the Top Hat Restructure (section 615-40 and subsection 124-15(3)).

14. For the purposes of determining any discount capital gains under Division 115 on a future disposal of your New Telstra Corp Shares acquired under the Top Hat Restructure, you will be taken to have acquired those New Telstra Corp Shares on the same date you acquired your Telstra Shares (table item 2 of subsection 115-30(1)).

15. You cannot obtain a roll-over under Subdivision 124-M in respect of the CGT event that happened in relation to the exchange of your Telstra Shares as you will be taken to have chosen roll-over relief under Division 615 for that event (subsection 124-795(3)).

Resident shareholders holding shares as trading stock

16. If you are an Australian resident that held your Telstra Shares as trading stock (as defined in subsection 995-1(1)) and subsequently hold your New Telstra Corp Shares as trading stock, the amount included in your assessable income on disposal of your Telstra Shares is:

- if those shares have been held as trading stock since the start of the income year that included the disposal time, the total value of each Telstra Share as trading stock at the start of the income year and the amount (if any) by which its cost has increased since the start of the income year, or
- the cost of each Telstra Share at the time of the disposal (subsection 615-50(1)).

17. The amount taken to have been paid by you for each of the New Telstra Corp Shares acquired as trading stock is equal to the amount included in assessable income on disposal of the Telstra Shares (as calculated in paragraph 16 of this Ruling) divided by the number of New Telstra Corp Shares acquired as trading stock (subsection 615-50(2)).

Resident shareholders holding shares as revenue assets

18. If you are an Australian resident that held your Telstra Shares as revenue assets (as defined in section 977-50) immediately before their disposal in the Top Hat restructure, and subsequently hold your New Telstra Corp Shares as revenue assets, the gross

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proceeds received for the disposal of each Telstra Share is taken to be the amount needed to have a nil profit and nil loss for that disposal (subsection 615-55(1)).

19. For the purpose of calculating any profit or loss on a further disposal of each New Telstra Corp Share acquired under the Top Hat Restructure that is held as a revenue asset, the amount taken to have been paid for each New Telstra Corp Share is the total amount of gross proceeds needed to have a nil profit and nil loss for the disposal (as calculated in paragraph 18 of this Ruling) divided by the number of New Telstra Corp Shares acquired as revenue assets (subsection 615-55(2)).

Non-resident shareholders that are not ineligible foreign shareholders

20. If you are a non-resident who participated in the Top Hat Restructure (that is, who is not an Ineligible Foreign Shareholder) and you held your Telstra Shares on capital account, you must disregard a capital gain or capital loss arising from the CGT event A1 that happened when you disposed of your Telstra Shares to New Telstra Corp as the event happened in relation to an asset that is not taxable Australian property (subsection 855-10(1)).

Anti-avoidance provisions

21. Having regard to the facts and circumstances of the Top Hat Restructure, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the provision of New Telstra Corp Shares under the Top Hat Restructure.

22. Having regard to the facts and circumstances of the Top Hat Restructure, the Commissioner will not make a determination under subsection 177F(1) of the ITAA 1936 that the Top Hat Restructure constitutes a scheme to which Part IVA of the ITAA 1936 applies.

Scheme

23. 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.

24. Other information referenced is as follows:

- Telstra Corporation Limited: Scheme Booklet: For the proposed restructure of the Telstra Group, dated 23 August 2022
- the Scheme Implementation Deed, as amended on 13 October 2022 (Implementation Deed)
- the Scheme of Arrangement, pursuant to sections 411 and 413 of the *Corporations Act 2001* (Corporations Act) (Scheme of Arrangement).

Telstra Corporation Limited

25. Telstra is an Australian-resident company that provides a range of telecommunications products and services domestically and internationally.

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26. Prior to the Top Hat Restructure, Telstra was the head company of the Telstra Tax Consolidated Group (TTCG), which was formed on 1 July 2002. From this date, Telstra and each of its wholly-owned subsidiaries (from when they became a wholly-owned subsidiary) were a part of the same consolidated group for income tax purposes.

27. Prior to the Top Hat Restructure, Telstra was listed on the Australian Securities Exchange (ASX).

28. At the time of the Top Hat Restructure, Telstra Shares were not taxable Australian property under Division 855.

T22 Strategy and broad restructure of the Telstra Corporation Limited business

29. On 20 June 2018, Telstra announced a new strategy to simplify its operations and product set to improve customer experience and reduce its costs (T22 Strategy).

30. On 22 March 2021, Telstra further announced a plan to restructure the business units in the TTCG as part of the T22 Strategy. Included in this announcement was Telstra's intention to interpose a new parent company between Telstra and Telstra's existing shareholders pursuant to a scheme of arrangement made under Part 5.1 of the Corporations Act (the Top Hat Restructure).

31. The Scheme of Arrangement also included Telstra creating a new structure to acquire and hold its non-infrastructure business and assets (Business Restructure Component).

32. The Top Hat Restructure and the Business Restructure Component were both components of the Scheme of Arrangement voted upon by shareholders. The Business Restructure Component will be implemented on or around 1 January 2023.

33. As a consequence of Telstra's Top Hat Restructure and Business Restructure Component proposal, Telstra also entered into an agreement with an unrelated entity. Part of that agreement involved a subsidiary of New Telstra Corp issuing a special share to the unrelated entity, the timing of which is contingent on implementation of the Business Restructure Component.

The Top Hat Restructure

34. The Top Hat Restructure was implemented through a number of steps, as set out in paragraphs 35 to 50 of this Ruling.

Step 1 – Telstra Group Limited was established

35. New Telstra Corp was incorporated as a public company limited by shares. On incorporation, New Telstra Corp had 2 shares on issue (Founder Shares) which were held by Telstra.

Step 2 – Telstra Corporation Limited and Telstra Group Limited entered into the scheme implementation deed and other related documents

36. Telstra and New Telstra Corp entered into the Implementation Deed setting out the steps to be followed to implement the Top Hat Restructure. The Implementation Deed also set out steps required to implement other parts of the T22 strategy.

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37. At or around the same time as entry into the Implementation Deed, New Telstra Corp executed a Deed Poll in favour of the former holders of Telstra Shares to perform all of the steps that it was required to undertake to implement the Top Hat Restructure.

38. Goldman Sachs Australia Pty Ltd, being an entity that is not a related party to the TTCG, was appointed by Telstra to act as the sale facility nominee (Sale Nominee) for the Sale Facility under the Top Hat Restructure for the purposes of dealing with Telstra Shares held by foreign residents where a foreign law impedes New Telstra Corp from issuing or transferring an interest to the foreign interest holder or where it would be impractical or unreasonably onerous to determine whether such a foreign law did impede New Telstra Corp's ability to issue or transfer an interest (Ineligible Foreign Shareholders).

39. The Sale Facility was established and implemented by Telstra, under which:

- shortly before the Top Hat Restructure was implemented, the Telstra Shares held by Ineligible Foreign Shareholders would be transferred to the Sale Nominee, and
- just after the Top Hat Restructure, the New Telstra Corp Shares that were issued to the Sale Nominee under the Top Hat Restructure in respect of the Ineligible Foreign Shares would be sold on the ASX and the cash proceeds distributed to Ineligible Foreign Shareholders.

Step 3 – Top Hat Restructure meeting

40. Following an application made to the Supreme Court of New South Wales (NSW) on 8 July 2022, which was granted, subsection 411(1) of the Corporations Act required a meeting of the then-holders of Telstra Shares to be held, at which the Top Hat Restructure and Business Restructure Component was to be approved by a resolution passed by a majority of the then holders of Telstra Shares present and voting at the meeting and representing an aggregate of not less than 75% of the votes cast at the meeting.

41. This meeting was held on 11 October 2022, with the resolution being passed by the requisite majority of the then holders of Telstra Shares at the meeting.

Step 4 – effective date

42. Following the second Supreme Court of NSW hearing on 19 October 2022 and the Court exercising its discretion to grant the orders approving the Top Hat Restructure, the Top Hat Restructure came into effect pursuant to subsection 411(1) of the Corporations Act when a copy of the court orders approving the Top Hat Restructure were lodged with the Australian Securities & Investments Commission on 20 October 2022 (Effective Date).

43. The Effective Date was also the last day of trading in Telstra Shares on the ASX. However, as is usual for a scheme of this nature, Telstra remained admitted to the Official List of the ASX and its shares continued to be quoted, although suspended from trading, until after the Top Hat Restructure was implemented.

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Step 5 – listing of Telstra Group Limited

44. Before the commencement of trading on the day after the Effective Date:
- New Telstra Corp was admitted to the Official List of the ASX and quotation of its shares commenced, and
 - New Telstra Corp Shares commenced trading on a deferred settlement basis.

Step 6 – record date

45. In accordance with normal ASX settlement procedures, the Record Date was 2 business days after the Effective Date. This was to allow settlement of all trades occurring up until the close of trading on the Effective Date.

46. All Telstra Shareholders on the Telstra share register on the Record Date (including the Sale Nominee) were entitled to participate in the Top Hat Restructure unless they were Ineligible Foreign Shareholders.

Step 7 – transfer of shares

47. On the Implementation Date:
- New Telstra Corp Shares were issued by New Telstra Corp to the former holders of Telstra Shares (including the Sale Nominee), with each former holder of Telstra Shares receiving one New Telstra Corp Share for each Telstra Share held prior to the Top Hat Restructure such that each owned a whole number of New Telstra Corp Shares
 - the New Telstra Corp Shares that were issued are not redeemable shares
 - the former holders of Telstra Shares (including the Sale Nominee) as at the Record Date transferred all of their Telstra Shares to New Telstra Corp
 - the Founder Shares in New Telstra Corp were cancelled, with the result that (immediately after implementation) New Telstra Corp owned all of the Telstra Shares on issue and the former holders of Telstra Shares (including the Sale Nominee) owned all of the New Telstra Corp Shares in the same proportion that they previously held Telstra Shares, and
 - New Telstra Corp chose that the TTCG continues in existence at and after the completion of the Top Hat Restructure with New Telstra Corp as its head company.

Step 8 – sale of shares by the sale nominee

48. The Sale Nominee sold the New Telstra Corp Shares that it held. The sale process commenced on 1 November 2022 and concluded on 2 November 2022. Settlement of the share sales was finalised on 4 November 2022.

CR 2022/104

Status: **legally binding**

49. This sale occurred on market on the ASX in the ordinary course of trading and the Sale Nominee distributed the proceeds of the sale to the Ineligible Foreign Shareholders in amounts equal to their proportion of the capital proceeds (less expenses).

50. The last day of trading on the ASX for Telstra Shares was 20 October 2022.

Commissioner of Taxation

16 November 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.*

Division 615 roll-over

51. Roll-over relief under Division 615 enables a member of a company or a trust to disregard a capital gain or capital loss from a share or a unit that is either disposed of, or redeemed or cancelled, as part of a reorganisation of the affairs of the entity, where the member becomes the owner of new shares in another company in exchange.

52. Division 615 contains several conditions for eligibility to choose roll-over. The main conditions that are relevant to the exchange of Telstra Shares for New Telstra Corp Shares are:

- at least 2 entities must own all the shares or units in the 'original entity' (Telstra) (paragraphs 615-5(1)(a) and (b))
- there must be a scheme for reorganising the original entity's affairs and consideration for the disposal of the shares or units in the original entity must consist only of receiving shares in another company (the interposed company) (New Telstra Corp) and nothing else (paragraph 615-5(1)(c))
- the interposed company must own all the shares or units in the original entity immediately after all the exchanging members have disposed of their shares or units in the original entity (the completion time) (section 615-15)
- immediately after the completion time, each exchanging member must own a whole number of shares in the interposed company (paragraph 615-20(1)(a))
- immediately after the completion time, each exchanging member must own a percentage of the shares in the interposed company that were issued to all the exchanging members of the original entity that is equal to the percentage of the shares or units in the original entity that the exchanging member owned (paragraph 615-20(1)(b))
- immediately after the completion time, the exchanging members must own all the shares in the interposed company or entities other than the exchanging members must own no more than 5 shares in the interposed company and the market value of those shares is such that it is reasonable to treat the exchanging members as owning all the shares (subsection 615-25(3))
- the shares issued in the interposed company must not be redeemable shares (subsection 615-25(1)), and
- the market value ratio tests in subsection 615-20(2) are satisfied.

53. The main conditions outlined in paragraph 52 of this Ruling are satisfied because, under the scheme, each former holder of Telstra Shares received New Telstra Corp Shares in exchange for all of their Telstra Shares and nothing else.

54. At the completion time of the scheme, New Telstra Corp owned all of the Telstra Shares on issue.

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55. Immediately after the completion time, each former holder of Telstra Shares owned the same percentage of the New Telstra Corp Shares as they owned in Telstra before the scheme and all participating shareholders owned a whole number of ordinary New Telstra Corp Shares.

56. The class of entities to which this Ruling applies and the scheme described in paragraphs 23 to 50 of this Ruling provide the relevant facts and circumstances that satisfy the conditions for roll-over relief under Division 615.

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 45B(3)
- ITAA 1936 45C
- ITAA 1936 Part IVA
- ITAA 1936 177F(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 Div 115
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-15(2)
- ITAA 1997 124-15(3)
- ITAA 1997 124-795(3)
- ITAA 1997 Div 230
- ITAA 1997 Div 615
- ITAA 1997 615-5
- ITAA 1997 615-5(1)(a)
- ITAA 1997 615-5(1)(b)
- ITAA 1997 615-5(1)(c)
- ITAA 1997 615-5(2)
- ITAA 1997 615-10
- ITAA 1997 615-15
- ITAA 1997 615-20(1)(a)
- ITAA 1997 615-20(1)(b)
- ITAA 1997 615-20(2)
- ITAA 1997 615-25(1)
- ITAA 1997 615-25(3)
- ITAA 1997 615-40
- ITAA 1997 615-50(1)
- ITAA 1997 615-50(2)
- ITAA 1997 615-55(1)
- ITAA 1997 615-55(2)
- ITAA 1997 Div 855
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 411
- Corporations Act 2001 411(1)
- Corporations Act 2001 413

ATO references

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