


CR 2022/40 - Over The Wire Holdings Limited - scrip for scrip roll-over

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Status: **legally binding**

Class Ruling

Over The Wire Holdings Limited – scrip for scrip roll-over

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 the holders of ordinary shares in Over the Wire Holdings Limited (OTW) in relation to the acquisition of those shares by Aussie Broadband Limited (ABB) on 15 March 2022 (Scheme Implementation Date) by way of a scheme of arrangement.
2. Full details of this scheme of arrangement are set out in paragraphs 32 to 56 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 OTW ordinary shares who participated in the scheme that is the subject of this Ruling
 - were registered on the OTW share register on 8 March 2022 (Record Date)
 - were an Australian resident as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) or a non-resident other than a non-resident who carries on a business at or through a permanent establishment in Australia

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- held your OTW shares on capital account; that is, you did not hold your OTW shares as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 955-1(1)), and
 - are not deemed to have acquired your shares in OTW prior to 20 September 1985.
5. This Ruling does not apply to you if you:
- acquired your OTW shares under an OTW employee share or option plan after 11 February 2022, or
 - are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme of arrangement outlined in paragraphs 32 to 56 of this Ruling.

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

When this Ruling applies

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

Ruling

Capital gains tax consequences

CGT event A1

7. CGT event A1 happened when you disposed of your OTW shares to ABB (subsection 104-10(1)).
8. The time of CGT event A1 was when your OTW shares were transferred to ABB on the Scheme Implementation Date of 15 March 2022 (paragraph 104-10(3)(b)).

Over the Wire Holdings Limited shareholders that elected the All Cash Consideration Option

9. If you elected to receive the All Cash Consideration Option, the capital proceeds received from CGT event A1 for the disposal of an OTW share after the Cash Scaleback Mechanism was applied were the:
- cash payment of \$5.415 per OTW Share (paragraph 116-20(1)(a)), and
 - scrip consideration being the market value (worked out at the time of the CGT event A1) of 0.067 new ABB shares per OTW share (paragraph 116-20(1)(b)).

Over the Wire Holdings Limited shareholders that elected the All Scrip Consideration Option

10. If you elected to receive the All Scrip Consideration Option, the capital proceeds received from CGT event A1 for the disposal of an OTW share were the market value (worked out at the time of CGT event A1) of the 1.15 replacement ABB shares you received per OTW share (paragraph 116-20(1)(b)).

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11. For the purposes of determining the market value of an ABB share for the capital proceeds as required by subsection 104-10(4), the Commissioner accepts that the market value of an ABB share on the Scheme Implementation Date was \$5.34.

Over the Wire Holdings Limited shareholders that elected the Default Consideration Option

12. If you elected to receive the Default Consideration Option, the capital proceeds received from CGT event A1 for the disposal of an OTW share were the:

- cash consideration received being \$4.332 cash per OTW share (paragraph 116-20(1)(a)), and
- scrip consideration received being the market value (worked out at the time of CGT event A1) of the 0.283 new ABB shares received per OTW share (paragraph 116-20(1)(b)).

Over the Wire Holdings Limited shareholders that elected the Mix and Match Consideration Option

13. If you elected to receive the Mix and Match Consideration Option, the capital proceeds received from CGT event A1 for the disposal of an OTW share were the:

- cash consideration received per OTW share in accordance with your specific Mix and Match Consideration elected (paragraph 116-20(1)(a)), and
- scrip consideration received being the market value (worked out at the time of CGT event A1) of the new ABB shares received per OTW share in accordance with your specific Mix and Match Consideration elected (paragraph 116-20(1)(b)).

14. For example, where your Mix and Match Consideration Option elected was for a mix of 50% cash and 50% scrip, the capital proceeds received from CGT event A1 for the disposal of an OTW share were the:

- cash consideration received per OTW share being \$2.707 per OTW share (paragraph 116-20(1)(a)), and
- scrip consideration received being the market value (worked out at the time of CGT event A1) of the 0.608 new ABB shares received per OTW share (paragraph 116-20(1)(b)).

Capital gain or capital loss

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

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

Discount capital gain

17. If you made a capital gain from the disposal of your OTW share, you are eligible to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to

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have acquired, your OTW share on or before 14 March 2021 and the conditions of Division 115 are met.

Non-resident shareholders

18. If you were a non-resident shareholder just before the Scheme Implementation Date (that is, you were not a resident of Australia as defined in subsection 6(1) of the ITAA 1936 and your OTW shares were not 'taxable Australian property') you disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your OTW shares to ABB (section 855-10).

19. Your OTW 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

20. Subject to the qualifications in paragraph 21 of this Ruling, if you made a capital gain from the disposal of your OTW shares for which you received scrip consideration, you may choose to obtain scrip for scrip roll-over for your capital gain (section 124-780) or partial scrip for scrip roll-over under subsection 124-790(1) for that part of the capital gain that is referable to the receipt of the replacement ABB shares (sections 124-780 and 124-790).

21. Scrip for scrip roll-over cannot be chosen if:

- any capital gain you make from the replacement ABB shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)), or
- you were a non-resident just before the Scheme Implementation Date, unless your replacement ABB shares were 'taxable Australian property' (as defined in section 855-15) just after the Scheme Implementation Date (subsection 124-795(1)).

Consequences if you choose to apply scrip for scrip roll-over

22. If you choose scrip for scrip roll-over, the capital gain you made from the disposal of your OTW share is disregarded to the extent that you received replacement ABB shares for the disposal of your OTW share (eligible proceeds) (subsection 124-785(1)).

23. The capital gain made from the disposal of an OTW share is not disregarded to the extent that you received cash for the disposal of your OTW shares (ineligible proceeds) (subsection 124-790(1)).

24. The first element of the cost base and reduced cost base of a replacement ABB share received in exchange for your original OTW shares is worked out by reasonably attributing the cost base and reduced cost base (respectively) of your original OTW shares (subsections 124-785(2) and (4)). Any part of the cost base of the OTW share exchanged by you that relates to the receipt of cash consideration is not included (subsection 124-785(3)).

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25. The date of acquisition of these ABB shares for 'discount capital gain' purposes is the date you acquired your original OTW shares (table item 2(a) of subsection 115-30(1)).

If scrip for scrip roll-over is not chosen or cannot be chosen

Capital gain or loss not disregarded

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

27. If you made a capital gain and scrip for scrip roll-over is not chosen or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions in Subdivision 115-A are met.

Cost base and reduced cost base of replacement Aussie Broadband Limited shares

28. Where scrip for scrip roll-over is not chosen or cannot be chosen, the first element of the cost base and reduced cost base of each replacement ABB share that you received is equal to that part of the market value of the OTW share you gave in respect of acquiring your ABB shares (paragraph 110-25(2)(b), and subsections 110-55(2) and 112-30(1)). The market value of an OTW share given by you that is attributable to the receipt of cash consideration is not included in the cost base or reduced cost base of a new ABB share (subsection 112-30(1)).

29. The market value of the OTW shares you gave is to be worked out as at the time when you acquired the ABB share.

30. For the purposes of determining the market value of an ABB share for the capital proceeds as required by subsection 104-10(4), the Commissioner accepts that the market value of an OTW share on the Scheme Implementation Date was \$5.71.

Acquisition date of replacement Aussie Broadband Limited shares

31. Where scrip for scrip roll-over is not chosen or cannot be chosen, you are deemed to have acquired your new ABB shares when those shares were issued to you on 15 March 2022, being the Scheme Implementation Date (paragraph 104-35(5)(c) and table item 2 of section 109-10).

Scheme

32. 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.

Relevant entities

Over The Wire Holdings Limited

33. OTW was an Australian-resident company incorporated on 1 July 2011 and listed on the Australian Securities Exchange (ASX) on 3 December 2015.

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34. OTW was a telecommunications company with presence across major Australian capital cities and Auckland, New Zealand. As of 30 June 2021, OTW had approximately 16,000 business customers across small and medium business, enterprise and government.

35. As at 1 March 2022, OTW had 59,820,196 ordinary shares on issue. OTW had no other classes of shares on issue.

36. According to OTW's share registry dated 10 December 2021, approximately 0.00617% of OTW shareholders were non-residents.

Aussie Broadband Limited

37. ABB was incorporated on 7 July 2008 and was listed on the ASX on 16 October 2020.

38. ABB is an Australian telecommunications company and is Australia's fifth largest provider of National Broadband Network services.

39. The ABB acquisition of 100% of the OTW shares was funded partly with the issue of new ABB ordinary shares of 13,757,911 (at a price of \$5 per share), with the balance funded by existing cash and new facilities totalling \$175 million (including a new three-year senior debt facility).

Scheme of Arrangement

40. On 2 December 2021, OTW announced that it had entered into a Scheme Implementation Deed with ABB for the acquisition of 100% of the OTW shares pursuant to a scheme of arrangement.

41. At a shareholder meeting held on 24 February 2022, OTW shareholders approved the scheme of arrangement.

42. On 3 March 2022, the Federal Court of Australia made orders approving the scheme of arrangement.

43. On 4 March 2022, the scheme of arrangement became effective and OTW shares were suspended from trading at the close of trade on the ASX.

44. Under the terms of the Scheme Implementation Deed, OTW shareholders (other than ineligible foreign shareholders) may elect to exchange all of the shares they hold in OTW for Scheme Consideration, as follows:

Election	Scheme Consideration equating to the following for each OTW share
Default Consideration Option (80% cash and 20% scrip)	\$4.60 cash and 0.2300 new ABB shares
All Cash Consideration Option (100% cash)	\$5.75 cash
All Scrip Consideration Option (100% scrip)	1.1500 new ABB shares
Mix and Match Consideration Option (illustratively assuming 50% cash and 50% scrip election)	\$2.875 and 0.5750 new ABB shares

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45. OTW shareholders who were ineligible foreign shareholders (being an OTW shareholder whose address was outside Australia or New Zealand) may not make an election and will receive their Scheme Consideration in the form of All Cash Consideration.

46. OTW shareholders who did not make an election from the table in paragraph 44 of this Ruling, or made an invalid election, were taken to have elected the Default Consideration Option.

47. Entitlement to the Scheme Consideration was determined on 8 March 2022 (Scheme Record Date).

48. The maximum cash to be payable by ABB to OTW shareholders was \$275,174,594 and the maximum number of new ABB shares to be issued by ABB was 39,556,348.

49. The Aggregated Elected Cash Consideration at 4 March 2022 exceeded the \$275,174,594 maximum cash payable by ABB and the Cash Scaleback Mechanism applied to reduce the cash payable to the OTW shareholders on a pro rata basis. The Scheme Consideration for the OTW shareholders after the Cash Scaleback Mechanism was applied is as follows:

Election	Scheme Consideration equating to the following for each OTW share after the Cash Scaleback Mechanism
Default Consideration Option (80% cash and 20% scrip)	\$4.332 cash and 0.283 new ABB shares
All Cash Consideration Option (100% cash)	\$5.415 cash and 0.067 new ABB shares
All Scrip Consideration Option (100% scrip)	1.1500 new ABB shares
Mix and Match Consideration Option (illustratively assuming 50% cash and 50% scrip election)	\$2.707 and 0.608 new ABB shares

50. Payment of the Scheme Consideration to OTW shareholders and the transfer of OTW shares to ABB occurred on the Scheme Implementation Date of 15 March 2022

Other matters

51. The OTW shareholders and ABB are dealing at arms' length for the purpose of subsection 124-780(4).

52. Both OTW and ABB have more than 300 shareholders, and more than 20 persons who held at least 75% of the interests in both OTW and ABB just prior to the Record Date for the purpose of section 124-810.

53. There was no 'significant stakeholder' or 'common stakeholder' in OTW or ABB within the meaning of those terms in section 124-783.

54. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of OTW shares to ABB.

55. On the Scheme Implementation Date, the sum of the market values of OTW's assets that were taxable Australian real property did not exceed the sum of the market values of its other assets for the purposes of section 855-30.

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Key dates

56. The following table is a summary of the key dates for the scheme of arrangement:

Date	Event
2 December 2021	Scheme Announcement date
21 January 2022	First Court hearing (the court made orders convening the scheme meeting)
21 January 2022	Date of the scheme booklet
17 February 2022	Election date (latest date by which the election forms must be received by the OTW share registry)
22 February 2022	Scheme meeting record date (date for deciding eligibility of OTW shareholders to vote at scheme meeting)
24 February 2022	Scheme meeting
3 March 2022	Second Court hearing (court approved scheme)
4 March 2022	Effective date (date on which the scheme comes into effect and is binding on OTW shareholders, OTW shares are suspended from trading at the close of trading on the ASX)
8 March 2022	Scheme Record Date
15 March 2022	Scheme Implementation Date

Commissioner of Taxation

27 April 2022

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

57. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain that arises on the disposal of a share if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base of the replacement share.

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

- (a) an entity exchanges shares in a company for shares in another company (paragraph 124-780(1)(a))
- (b) the exchange is in consequence of a single arrangement that satisfies subsection 124-780(2) or (2A)
- (c) conditions for the roll-over in subsection 124-780(3) are satisfied
- (d) further conditions, if applicable, are satisfied, and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

59. If you elected to receive the All Scrip Consideration Option under the scheme of arrangement that is subject of this Ruling, you satisfy the requirements for scrip for scrip roll-over under Subdivision 124-M.

60. If you elected to receive the Default Consideration Option or the Mix and Match Consideration Option under the scheme of arrangement that is subject of this Ruling, you satisfy the requirements for partial scrip for scrip roll-over under Subdivision 124-M.

Consequences if you choose partial scrip for scrip roll-over for your Over the Wire Holdings Limited shares

61. If you choose partial scrip for scrip roll-over, the capital gain you made from the disposal of your OTW shares is disregarded to the extent you received replacement ABB shares for the disposal of your OTW shares (eligible proceeds) (subsection 124-785(1)). The capital gain is not disregarded to the extent that you received cash consideration for the disposal of your OTW shares (ineligible proceeds).

62. Subsection 124-790(2) provides that the cost base (or reduced cost base) of the ineligible proceeds is that part of the cost base of the original interest as is reasonably

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attributable to the ineligible proceeds. The cost base of the OTW share is, for the purposes of working out the cost base of the replacement ABB share, reduced by that part of the cost base which is reasonably attributable to the cash consideration.

63. The method to be used by an OTW shareholder to calculate that part of the cost base that is not reasonably attributable to the cash consideration where you elected the All Cash Consideration Option however the Cash Scaleback Mechanism applied (eligible proceeds cost base) is:

$$\text{Eligible proceeds cost base} = \text{Cost base of OTW share} \times \frac{\text{Market value of ABB share}}{\text{Market value of ABB share} + \$5.415}$$

64. The method to be used by an OTW shareholder to calculate that part of the cost base of each OTW share that is not reasonably attributable to the cash consideration where you elected or were taken to make the Default Consideration Option (eligible proceeds cost base) is:

$$\text{Eligible proceeds cost base} = \text{Cost base of OTW share} \times \frac{\text{Market value of ABB share}}{\text{Market value of ABB share} + \$4.332}$$

65. The method to be used by an OTW shareholder to calculate that part of the cost base of each OTW share that is not reasonably attributable to the cash consideration where you elected the Mix and Match Consideration Option (eligible proceeds cost base) is:

$$\text{Eligible proceeds cost base} = \text{Cost base of OTW share} \times \frac{\text{Market value of ABB share}}{\text{Market value of ABB share} + \$2.707}$$

Note the examples in paragraphs 65 and 68 of this Ruling are for illustration only. For this purpose, it is assumed that a combination of an election of 50% cash (\$2.707) and 50% scrip (0.608 replacement ABB shares) was made.

66. The method to be used by an OTW shareholder to calculate that part of the cost base of each OTW share that is reasonably attributable to the cash consideration where you elected or were taken to make the All Cash Consideration Option however the Cash Scaleback Mechanism applied (ineligible proceeds cost base) is:

$$\text{Ineligible proceeds cost base} = \text{Cost base of OTW share} \times \frac{\$5.415}{\text{Market value of ABB share} + \$5.415}$$

67. The method to be used by an OTW shareholder to calculate that part of the cost base of each OTW share that is reasonably attributable to the cash consideration where you elected or were taken to make the Default Consideration Option (ineligible proceeds cost base) is:

$$\text{Ineligible proceeds cost base} = \text{Cost base of OTW share} \times \frac{\$4.332}{\text{Market value of ABB share} + \$4.332}$$

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68. The method to be used by an OTW shareholder to calculate that part of the cost base of each OTW share that is reasonably attributable to the cash consideration where you elected the Mix and Match Consideration Option (ineligible proceeds cost base).

$$\text{Ineligible proceeds cost base} = \text{Cost base of OTW share} \times \frac{\$2.707}{\text{Market value of ABB share} + \$2.707}$$

69. In working out the amount of the capital gain that is subject to scrip for scrip roll-over, the following method may be applied:

$$\text{Capital gain (roll-over)} = \text{Eligible proceeds} - \text{Eligible process cost base}$$

70. In working out the amount of the capital gain that is not subject to scrip for scrip roll-over, the following method may be applied:

$$\text{Capital gain} = \text{Ineligible proceeds} - \text{Ineligible proceeds cost base}$$

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References

Related Rulings/Determinations:

TR 2006/10

- ITAA 1997 124-780(2A)
- ITAA 1997 124-780(3)
- ITAA 1997 124-780(3)(f)
- ITAA 1997 124-780(4)
- ITAA 1997 124-783
- 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 124-790(2)
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-810
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 855-30
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- ITAA 1936 6(1)
- TAA 1953

Legislative references:

- 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 104-35(5)(c)
 - ITAA 1997 104-165(3)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)(b)
 - ITAA 1997 110-55(2)
 - ITAA 1997 112-30(1)
 - ITAA 1997 Div 115
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)(a)
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(1)(a)
 - ITAA 1997 124-780(2)
-

ATO references

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Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip - Subdivision 124-M

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