


# ***CR 2024/15 - Cenntro Electric Group Ltd - exchange of shares for Cenntro Inc. shares***

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Status: **legally binding**

## Class Ruling

# Cenntro Electric Group Ltd – exchange of shares for Cenntro Inc. shares

### **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 Australian-resident shareholders in Cenntro Electric Group Ltd (Cenntro) that exchanged their Cenntro fully paid ordinary shares (Cenntro Shares) for Cenntro Inc. (Cenntro US) shares of common stock (Cenntro US Shares) under the scheme of arrangement (Scheme) implemented by Cenntro on 27 February 2024 (Implementation Date).
2. Details of the Scheme are set out in paragraphs 24 to 37 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:
  - participated in the Scheme that is the subject of this Ruling
  - held Cenntro Shares on 22 February 2024 (Record Date)
  - were a resident of Australia for the purposes of subsection 6(1) of the *Income Tax Assessment Act 1936* at the time the scheme was undertaken and were not a temporary resident within the meaning of the term 'temporary resident' in subsection 995-1(1), and
  - held your Cenntro Shares on capital account, trading stock or as revenue assets and hold your Cenntro US Shares on the same basis, respectively, after the Scheme.

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5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the Scheme outlined in paragraphs 24 to 37 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 2023 to 30 June 2024.

## **Ruling**

### **Disposal of Cenntro Electric Group Ltd shares – CGT event A1**

7. CGT event A1 happened when you disposed of each of your Cenntro Shares to Cenntro US under the Scheme (subsection 104-10(1)).

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

9. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Cenntro Share were more than the cost base of that share (subsection 104-10(4)). The capital gain is the amount of that excess.

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

11. The capital proceeds in respect of CGT event A1 happening were the market value of the Cenntro US Share received by you as consideration for each Cenntro Share exchanged (subsection 116-20(1)). The market value of the Cenntro US Share received is worked out as at the time of CGT event A1, which was the Implementation Date (paragraph 116-20(1)(b)).

### **Availability of Division 615 roll-over**

12. You can choose to obtain a roll-over because all relevant conditions under Division 615 are satisfied when you disposed of your Cenntro Share to Cenntro US in exchange for Cenntro US Shares (and nothing else) (section 615-5).

### **Consequences if you choose a roll-over**

#### ***Capital gains tax consequences for shares held as capital assets***

13. Where you choose a roll-over under Division 615, you disregard any capital gain or capital loss made from the disposal of the Cenntro Share in exchange for the Cenntro US Share (sections 615-10 and 615-40, and subsection 124-15(2)).

14. The first element of the cost base and reduced cost base of each Cenntro US Share that you acquired under the Scheme will equal the cost base of the Cenntro Share for which it was exchanged (section 615-40 and subsection 124-15(3)).

15. For the purposes of determining any discount capital gain under Division 115, you are taken to have acquired the Cenntro US Share on the same date you acquired your corresponding Cenntro Share (table item 2 of subsection 115-30(1)).

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### *Shares held as trading stock*

16. If you held your Cenntro Share as trading stock (as defined in subsection 995-1(1)) and subsequently hold your Cenntro US Share as trading stock, the amount included in your assessable income on disposal of your Cenntro Share is:

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

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

### *Shares held as revenue assets*

18. If you held your Cenntro Share as a revenue asset (as defined in section 977-50) and subsequently hold your Cenntro US Share as a revenue asset, the gross proceeds received for disposing of your Cenntro Share is taken to be the amount needed to have a nil profit and nil loss for that disposal (subsection 615-55(1)).

19. When calculating any profit or loss on the future disposal of the replacement Cenntro US Share (held as a revenue asset), the amount taken to have been paid 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) (subsection 615-55(2)).

### *Capital gains tax consequences if a roll-over is not chosen*

20. Where a roll-over under Division 615 is not chosen and you did not hold your Cenntro Share as trading stock (as defined in subsection 995-1(1)) or as a revenue asset (as defined in section 977-50) you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your Cenntro Share in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

21. If you make a capital gain on disposal of your Cenntro Share, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. In particular, the Cenntro Share that was disposed of must have been acquired by you at least 12 months before the Implementation Date (section 115-25).

22. The date of acquisition of the Cenntro US Share is the date you were issued your Cenntro US Share, being the Implementation Date (table item 2 of section 109-10).

23. The first element of the cost base and reduced cost base of each replacement Cenntro US Share received is equal to the market value of the corresponding Cenntro Share you exchanged for that Cenntro US Share (subsections 110-25(2) and 110-55(2)).

## **Scheme**

24. 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.

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Status: **legally binding**

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### **Background**

25. Cenntro is an Australian-resident company for income tax purposes.
26. Cenntro is a public company, limited by shares, that was incorporated in Australia on 11 May 2017.
27. Cenntro specialises in the design, manufacturing and distribution of all-electric urban delivery vehicles.
28. Cenntro was the parent company of the Cenntro group and listed on the Nasdaq Capital Market (Nasdaq) in the United States of America (US) prior to the Scheme being implemented (see paragraphs 31 to 36 of this Ruling).
29. As at the Record Date, Cenntro had 30,828,778 fully paid ordinary shares on issue with over 100 registered shareholders recorded in its register of members.
30. Cenntro US is a corporation formed under the laws of Nevada, US (filing date 9 March 2023) and initially had one share of common stock on issue.

### **Scheme of arrangement**

31. On 8 September 2023, Cenntro and Cenntro US entered into a Scheme Implementation Agreement such that Cenntro US would acquire all Cenntro Shares. An eligible holder of Cenntro Shares (Eligible Shareholder) received one Cenntro US Share in exchange for each Cenntro Share held by that Eligible Shareholder as at the Record Date.
32. The common stock of Cenntro US issued to Cenntro shareholders are not redeemable shares.
33. Cenntro shareholders whose address, as shown in Cenntro's share register as at the Record Date in an ineligible jurisdiction (Ineligible Foreign Shareholders), were not issued Cenntro US Shares directly. Instead, these Cenntro US Shares were issued to a sale agent and sold through the share sale facility on their behalf, with the proceeds being remitted to those Ineligible Foreign Shareholders.
34. This was a Scheme of Arrangement between Cenntro and its shareholders under Part 5.1 of the *Corporations Act 2001* to re-domicile Cenntro to the US.
35. Under the Scheme:
- Cenntro became a wholly owned subsidiary of Cenntro US
  - the original Cenntro US Share on issue was cancelled
  - Cenntro was delisted from the Nasdaq, and
  - Cenntro US was listed on the Nasdaq.
36. Cenntro shareholders approved the Scheme at an extraordinary general meeting held on 25 January 2024. The Scheme was approved by the Supreme Court of New South Wales on 16 February 2024 with an effective date of 16 February 2024. The Record Date was 22 February 2024 and the Implementation Date was 27 February 2024.

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**Other matters**

37. This Ruling is made on the basis that Cenntro will choose that section 615-65 applies, as required under subsection 615-30(1), within the timeframe prescribed by subsection 615-30(3).

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**Commissioner of Taxation**

6 March 2024

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Status: **not legally binding**


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## Appendix – Explanation

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**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

38. Division 615 contains several conditions for eligibility to choose a roll-over. The main conditions that are relevant to the exchange of Cenntro Shares for Cenntro US Shares are:

- At least 2 entities must own all the shares or units in the 'original entity' (Cenntro) (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) (Cenntro US) 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).
- The requirements in section 124-20 have been satisfied for the Ineligible Foreign Shareholders.
- 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 unit 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)).
- The market value ratio tests in subsection 615-20(2) are satisfied.

39. Under the Scheme, each Cenntro shareholder received Cenntro US Shares in exchange for all of their Cenntro Shares and nothing else. At the completion time of the Scheme, Cenntro US owned all the shares in Cenntro. Each Cenntro shareholder had the same percentage interest in, and market value of shares in, Cenntro US immediately after the completion time as they had in Cenntro before the Scheme. All shareholders owned a whole number of shares in Cenntro US immediately after the completion time.

40. All other relevant conditions under Division 615 are satisfied under the Scheme.

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
  - 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 109-10
  - ITAA 1997 110-25(2)
  - ITAA 1997 110-55(2)
  - ITAA 1997 Div 115
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 115-25
  - ITAA 1997 115-30(1)
  - ITAA 1997 116-20(1)
  - ITAA 1997 116-20(1)(b)
  - ITAA 1997 124-15(2)
  - ITAA 1997 124-15(3)
  - ITAA 1997 124-20
  - ITAA 1997 Div 230
  - ITAA 1997 Div 615
  - ITAA 1997 615-5
  - ITAA 1997 615-5(1)(a)
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  - ITAA 1997 615-5(1)(c)
  - ITAA 1997 615-10
  - ITAA 1997 615-15
  - ITAA 1997 615-20(1)(a)
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  - ITAA 1997 615-25(1)
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  - ITAA 1997 615-30(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 615-65
  - 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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