

CR 2024/76 - APM Human Services International Limited - scrip for scrip roll-over



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Status: **legally binding**

Class Ruling

APM Human Services International Limited – scrip for scrip roll-over

❶ Relying on this Ruling

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for the holders of ordinary shares in APM Human Services International Limited (APM) who disposed of their APM ordinary shares to Ancora TopCo Ltd (TopCo) on 10 October 2024 (Implementation Date).
2. Details of this scheme are set out in paragraphs 28 to 43 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 registered on the APM share register on 30 September 2024 (Record Date)
 - are a resident of Australia (as defined in subsection 6(1) of the *Income Assessment Act 1936*) and not a 'temporary resident' as defined in subsection 995-1(1), and
 - held your APM ordinary shares on capital account – that is, you did not hold your shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).
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 28 to 43 of this Ruling.

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

Status: **legally binding**

When this Ruling applies

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

Ruling**CGT event A1 happened on the disposal of your APM Human Services International Limited ordinary shares**

7. CGT event A1 happened when you disposed of your APM ordinary shares to TopCo (section 104-10).

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

Capital proceeds – all cash consideration

9. If you received all cash consideration under the scheme, your capital proceeds from CGT event A1 happening is \$1.45 for each APM ordinary share you disposed of (paragraph 116-20(1)(a)).

Capital proceeds – all scrip consideration

10. If you received all scrip consideration under the scheme, your capital proceeds from CGT event A1 happening is the combined market value of the 95 Series A shares and 5 Series B shares in TopCo (TopCo shares) you received for each APM ordinary share you disposed of (paragraph 116-20(1)(b)). The market value of the TopCo shares is worked out at the time of CGT event A1 happening.

11. We accept that the combined market value of the TopCo shares you received for each APM ordinary share you disposed of on the Implementation Date was \$1.45.

Capital proceeds – mixed consideration

12. If you received mixed consideration under the scheme, your capital proceeds from CGT event A1 happening to each of your APM ordinary shares was the:

- cash payment of \$0.145 per APM ordinary share you received for 10% of the APM ordinary shares you disposed of (paragraph 116-20(1)(a)), and
- market value (worked out at the time of CGT event A1 happening) of the Series A shares and Series B shares you have received in TopCo for the remaining 90% of the APM ordinary shares you disposed of (paragraph 116-20(1)(b)).

13. We accept that the combined market value of the cash payment and the TopCo shares you received for each APM ordinary share you disposed of on the Implementation Date was \$1.45.

Status: **legally binding**

Capital gain or capital loss

14. You made a capital gain from CGT event A1 happening when you disposed of an APM ordinary share if the capital proceeds from the disposal were more than the cost base of that share (subsection 104-10(4)). The capital gain is the amount of the excess.

15. You made a capital loss from CGT event A1 happening when you disposed of an APM ordinary share if the capital proceeds from the disposal were less than the reduced cost base of that share (subsection 104-10(4)). The capital loss is the amount of the difference.

Availability of scrip for scrip roll-over

16. Subject to the qualification in paragraph 17 of this Ruling, if you received all scrip consideration or mixed consideration under the scheme and made a capital gain from the disposal of your APM ordinary shares, you may choose to obtain scrip for scrip roll-over relief to disregard your capital gain for the part of the capital gain that is referable to the receipt of the new TopCo shares (sections 124-780 and 124-790). Scrip for scrip roll-over is not available if you made a capital loss.

17. You cannot choose scrip for scrip roll-over if any capital gain you might make from a replacement TopCo share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if you choose scrip for scrip roll-over for your APM Human Services International Limited ordinary shares***All scrip consideration***

18. If you received all scrip consideration, where scrip for scrip roll-over is available and you choose it, the capital gain you made disposing of your APM ordinary shares is disregarded (subsection 124-785(1)).

Mixed consideration

19. If you received mixed consideration, where scrip for scrip roll-over is available and you choose it, the part of the capital gain that is attributable to the receipt of the replacement TopCo shares is disregarded (subsection 124-785(1)).

20. If you received mixed consideration, any part of the capital gain that is attributable to the receipt of cash consideration is not disregarded because it is ineligible proceeds for which roll-over is not available (subsection 124-790(1)).

Cost base and reduced cost base of shares in Ancora TopCo Ltd

21. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement TopCo share you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the APM ordinary shares for which it was exchanged and for which you obtained the roll-over (subsections 124-785(2) and (4)).

22. The market value of the APM ordinary shares that is attributable to the receipt of cash consideration is not included in the cost base or reduced cost base of the replacement TopCo share (subsection 112-30(1)).

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Acquisition date of shares in Ancora TopCo Ltd

23. If you choose scrip for scrip roll-over, for the purposes of working out whether a future capital gain made in respect of your TopCo shares is a discount capital gain, the TopCo shares you acquired in exchange for your APM ordinary shares are taken to have been acquired on the date you acquired the corresponding APM ordinary shares in relation to which roll-over was chosen (table item 2 of subsection 115-30(1)).

Consequences if you do not choose, or cannot choose partial or full scrip for scrip roll-over for your APM Human Services International Limited ordinary shares

Capital gain or capital loss is not disregarded

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

25. If you made a capital gain from CGT event A1 happening on the disposal of your APM ordinary shares where 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 of Subdivision 115-A are met. In particular, the APM ordinary shares you disposed of must have been acquired at least 12 months before the Implementation Date (section 115-25).

Cost base and reduced cost base of shares in Ancora TopCo Ltd

26. If you do not choose, or cannot choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement TopCo share you received is equal to the market value of your APM ordinary share (worked out as at the Implementation Date) that is reasonably attributable to the total number of TopCo shares you acquired on the Implementation Date (subsection 112-30(1)).

Acquisition date of shares in TopCo

27. If you do not choose, or cannot choose scrip for scrip roll-over, the acquisition date of the TopCo shares is the date on which those shares were issued to you, being the Implementation Date (table item 2 of section 109-10).

Scheme

28. 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.

APM Human Services International Limited

29. APM is a company that was incorporated in Australia in 2020.

30. APM was listed on the Australian Securities Exchange in November 2021.

31. APM was the head company of an Australian tax consolidated group and carried on a business of human services.

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32. APM had 917,181,946 ordinary shares on issue just before the Implementation Date of 10 October 2024.

33. Prior to the Implementation Date, APM's shareholders comprised both residents and non-residents of Australia and there were more than 300 APM shareholders in total.

Ancora TopCo Ltd

34. TopCo is a company that was incorporated in Australia on 22 May 2024 to facilitate the acquisition of APM ordinary shares under the scheme. TopCo will elect to form an income tax consolidated group comprising itself as the head company and Ancora BidCo Pty Ltd (BidCo) as one of its subsidiary members with effect from the date of their incorporation.

Scheme of arrangement

35. On 31 May 2024, APM and BidCo announced they had entered into a Scheme Implementation Deed for the acquisition of 100% of the APM ordinary shares not already owned by entities controlled by funds managed or advised by Madison Dearborn Partners, LLC (MDP) (existing MDP shareholders) by way of a scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Corporations Act). Separately, BidCo entered into a conditional transfer agreement with, among others, the existing MDP shareholders, on 31 May 2024 to acquire all of the APM ordinary shares held by the existing MDP shareholders in accordance with table item 7 of paragraph 611(b) of the Corporations Act (item 7 transaction).

36. At shareholder meetings held on 18 September 2024, APM shareholders approved the scheme of arrangement and the item 7 transaction.

37. On 25 September 2024, the Supreme Court of New South Wales made orders approving the scheme of arrangement.

38. All APM ordinary shares were transferred to BidCo on the Implementation Date.

39. Under the Scheme Implementation Deed, APM Shareholders were entitled to receive \$1.45 for each APM ordinary share held (all cash consideration).

40. As an alternative to receiving all cash consideration, APM shareholders could elect to exchange each APM ordinary share they held for either:

- all scrip consideration, consisting of 95 Series A shares and 5 Series B shares in TopCo (TopCo shares) per APM ordinary share, or
- mixed consideration, under which an APM shareholder would receive TopCo shares for 90% of the APM ordinary shares disposed of, and cash consideration (being \$0.145 per APM ordinary share) for the remaining 10% of the APM ordinary shares disposed of.

41. Neither TopCo nor any of its wholly owned subsidiaries issued equity (other than the TopCo shares issued to APM shareholders in exchange for their APM ordinary shares), or owed new debt under the scheme of arrangement, to an entity that was not a member of the group and in relation to the issuing of the replacement TopCo shares (paragraph 124-780(3)(f)).

42. APM shareholders and TopCo dealt with each other at arm's length in relation to the disposal and acquisition of the APM ordinary shares (subsection 124-780(4)).

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43. TopCo did not make a choice under subsection 124-795(4) that APM shareholders could not obtain roll-over under Subdivision 124-M for CGT event A1 happening in relation to the exchange of APM ordinary shares.

Commissioner of Taxation

11 December 2024

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1995 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 112-30(1)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25
 - 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(3)(f)
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-790
 - ITAA 1997 124-790(1)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 611(b)
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ATO references

NO: 1-140DO0E3
 ISSN: 2205-5517
 BSL: PG
 ATOLaw topic: Capital gains tax ~~ CGT events ~~ A1 – disposal of a CGT asset
 Capital gains tax ~~ Roll-overs ~~ Scrip for scrip

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