



Class Ruling

Income tax: CGT roll-over – exchange of shares in Touchcorp Limited for shares in Afterpay Touch Group Limited

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

Summary – 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:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Subdivision 115-A of the ITAA 1997
- section 124-15 of the ITAA 1997
- Division 615 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies are shareholders of Touchcorp Limited (Touchcorp) who:

- participated in the scheme that is the subject of the Ruling
- are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (and not temporary residents as defined in section 995-1 of the ITAA 1997) on the Implementation Date of the scheme (6 July 2017)
- owned ordinary shares in Touchcorp as at the Record Date (3 July 2017) for the scheme and held those on capital account at the time of the scheme and not as trading stock or revenue assets, and
- are not subject to the Taxation of Financial Arrangements (TOFA) under Division 230 of the ITAA 1997 in regard to their Touchcorp shares.

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

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement 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 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.

Date of effect

7. This Ruling applies from 1 July 2017 to 30 June 2018. The Ruling continues to apply after 30 June 2018 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant for this Ruling.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

9. On 6 July 2017 (the Implementation Date), pursuant to a scheme of arrangement effected under the *Companies Act 1981* (Bermuda), all shareholders of Touchcorp transferred all their shares to a newly incorporated Australian company, Afterpay Touch Group Limited (Afterpay Touch Group), in exchange for being issued new shares in Afterpay Touch Group and nothing else.

Background

10. Touchcorp is a company incorporated in Bermuda on 22 October 2013. Its shares were listed on the Australian Securities Exchange (ASX) on 31 March 2015. The Touchcorp group's employees and operations are predominantly in Australia. Touchcorp owns all the shares in an Australian company, Touch Holdings Limited, which is the head company of an Australian consolidated income tax group that includes Touch Australia Pty Limited as a 100% subsidiary member. Touch Australia Pty Limited owns approximately 27.8% of Afterpay Holdings Limited, another ASX listed company.

11. As at 24 April 2017, there were approximately 3,380 holders of a total 131,903,568 ordinary shares in Touchcorp consisting of approximately 74.6% Australian resident investors and 25.4% foreign investors (predominantly UK investors).

12. On 23 February 2017, Touchcorp announced, in an ASX announcement, an intention to merge with Afterpay Holdings Limited under a newly incorporated holding company, Afterpay Touch Group.

13. Afterpay Touch Group is a company that was incorporated in Australia on 30 March 2017 with nominal contributed share capital of \$2 consisting of two ordinary shares. It was incorporated for the above merger.

14. The merger was effected by both Touchcorp and Afterpay Holdings Limited undertaking separate schemes of arrangement under their relevant companies regulations with approval of their respective shareholders and the court.

15. The Touchcorp scheme of arrangement was approved by a vote of its shareholders at a meeting on 19 June 2017 and was sanctioned by the Supreme Court of Bermuda on 23 June 2017 pursuant to section 99 of the *Companies Act 1981* (Bermuda).

16. The Touchcorp scheme was implemented first on 6 July 2017. The Afterpay Holdings Limited scheme was also implemented on 6 July 2017 immediately after the Touchcorp scheme.

17. Under the Touchcorp scheme, on 6 July 2017 all shareholders of Touchcorp transferred ownership of all their shares to Afterpay Touch Group, and in exchange received 0.64 new shares in Afterpay Touch Group, and nothing else, for each share in Touchcorp. Fractional entitlements to Afterpay Touch Group shares were rounded to a whole share.

18. As a consequence of the Touchcorp scheme, Touchcorp became a wholly owned subsidiary company of Afterpay Touch Group.

19. Subsequently, the Touchcorp shares were delisted from the ASX and the new shares in Afterpay Touch Group were listed on the ASX.

20. Any foreign shareholders who were ineligible to receive shares in Afterpay Touch Group under the scheme due to laws of their country, had their new shares in Afterpay Touch Group issued instead to a nominee who would then sell the shares on the ASX and pay the net proceeds to the ineligible foreign shareholders.

Ruling

Disposal of Touchcorp shares – CGT Event A1

21. CGT event A1 happened when participating Touchcorp shareholders exchanged their Touchcorp shares for Afterpay Touch Group shares under the terms of the scheme (section 104-10).

22. CGT event A1 happened on the Implementation Date, being 6 July 2017 (subsection 104-10(3)).

23. A participating Touchcorp shareholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Touchcorp share exceeded the cost base of that share. The capital gain is the amount of the excess (subsection 104-10(4)).

24. A participating Touchcorp shareholder made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a Touchcorp share were less than the reduced cost base of that share. The capital loss is the amount of the excess (subsection 104-10(4)).

25. The capital proceeds in respect of CGT event A1 happening were the market value of any new Afterpay Touch Group shares received by the participating Touchcorp shareholders as consideration for each Touchcorp share exchanged (subsection 116-20(1)). The market value of any new Afterpay Touch Group shares received was worked out as at the time of CGT event A1, which was on the Implementation Date (6 July 2017) (paragraph 116-20(1)(b)).

Application of Division 615 roll-over

26. A participating Touchcorp shareholder is eligible to choose roll-over under Division 615.

Where Division 615 roll-over is chosen

27. A participating shareholder who chooses roll-over under Division 615 will disregard any capital gain or capital loss made from the disposal of their Touchcorp shares (section 615-40 with subsection 124-15(2)).

28. For a participating shareholder who chooses roll-over under Division 615, the first element of the cost base and reduced cost base of each new Afterpay Touch Group share they have acquired under the scheme will be the total of the cost bases of all their Touchcorp shares (worked out at the time of their disposal) apportioned over the number of new Afterpay Touch Group shares issued to the shareholder in exchange (section 615-40 with subsection 124-15(3)).

29. For the purposes of determining any discount capital gains under Division 115 on a future disposal of their Afterpay Touch Group shares acquired under the scheme, a participating shareholder who chooses roll-over will be taken to have acquired those Afterpay Touch Group shares on the same date they had acquired their corresponding Touchcorp shares (item 2 of the table in subsection 115-30(1)).

Where Division 615 roll-over is not chosen

30. A participating shareholder who does not choose roll-over must take into account any capital gain or capital loss from the disposal of their Touchcorp shares in working out their net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

31. A participating shareholder that is an individual, a complying superannuation entity or, subject to the rules in Subdivision 115-C, a trust, that made a capital gain where roll-over is not chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, the Touchcorp shares must have been acquired by the shareholder at least 12 months before their disposal to Afterpay Touch Group.

Appendix 1 – Explanation

❶ *This Appendix 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.*

Roll-over under Division 615

32. Roll-over 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.

33. Division 615 contains a number of conditions for eligibility to choose roll-over. The main conditions that are relevant to the participating shareholders exchanging shares in Touchcorp for shares in Afterpay Touch Group are:

- at least two entities must own all the shares or units in the 'original entity' (Touchcorp) (paragraph 615-5(1)(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') (Afterpay Touch Group) 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 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 those 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 test in subsection 615-20(2) is met.

34. Under the Touchcorp scheme of arrangement, the participating shareholders received ordinary shares in Afterpay Touch Group in exchange for all of their shares in Touchcorp on a ratio of 0.64 Afterpay Touch Group shares for each Touchcorp shares and nothing else. On implementation of the scheme, Afterpay Touch Group will own all the shares in Touchcorp, and the participating shareholders will have the same percentage interest and value in Afterpay Touch Group immediately after implementation of the Touchcorp scheme (and before the Afterpay Holdings Limited scheme) as they had in Touchcorp immediately before implementation. All shareholders will own a whole number of shares in Afterpay Touch Group. All other relevant conditions under Division 615 will also be satisfied under the scheme.

35. Accordingly, for participating shareholders who choose roll-over under Division 615, the capital gains tax consequences are set out in paragraphs 26 to 29 of this Ruling.

36. For participating shareholders who do not choose roll-over under Division 615, the capital gains tax consequences are set out in paragraphs 21 to 25 and 30 to 31 of this Ruling.

Appendix 2 – Detailed contents list

37. The following is a detailed contents list for this Ruling:

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References

<i>Previous draft:</i>	- ITAA 1997 124-15
Not previously issued as a draft	- ITAA 1997 124-15(2)
	- ITAA 1997 124-15(3)
<i>Related Rulings/Determinations:</i>	- ITAA 1997 Div 230
TR 2006/10	- ITAA 1997 Div 615
	- ITAA 1997 615-5(1)(b)
	- ITAA 1997 615-5(1)(c)
<i>Legislative references:</i>	- ITAA 1997 615-15
- ITAA 1936	- ITAA 1997 615-20(1)(a)
- ITAA 1936 6(1)	- ITAA 1997 615-20(1)(b)
- ITAA 1997	- ITAA 1997 615-20(2)
- ITAA 1997 102-5	- ITAA 1997 615-25(1)
- ITAA 1997 102-10	- ITAA 1997 615-25(3)
- ITAA 1997 104-10	- ITAA 1997 615-40
- ITAA 1997 104-10(3)	- ITAA 1997 995-1
- ITAA 1997 104-10(4)	- TAA 1953
- ITAA 1997 Div 115	- Companies Act 1981
- ITAA 1997 Subdiv 115-A	(Bermuda)
- ITAA 1997 115-30(1)	- Companies Act 1981
- ITAA 1997 Subdiv 115-C	(Bermuda) 99
- ITAA 1997 116-20(1)	
- ITAA 1997 116-20(1)(b)	

ATO references

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