



Class Ruling

Avita Medical Limited – exchange of shares for Avita Therapeutics, Inc. shares

📌 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.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for Australian resident shareholders in Avita Medical Limited (Avita AU) who held:
 - Australian ordinary shares (Avita AU shares) and exchanged these for Avita Therapeutics, Inc. (Avita US) CHES Depository Interests (CDIs) on 29 June 2020 (the Implementation Date), or
 - American Depositary Shares (ADS) and exchanged these for Avita US shares on the Implementation Date.
2. Full details of this scheme are set out in paragraphs 27 to 50 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - held Avita AU shares or ADS, as shown in the register on 25 June 2020 (the Record Date), and participated in the scheme that is subject to this Ruling

- were a resident of Australia as defined in subsection 6(1) of *the Income Tax Assessment Act 1936* and not a ‘temporary resident’ within the meaning of that expression in subsection 995-1(1) at the time the scheme was implemented, and
 - did not hold your Avita AU shares or ADS as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), that is, you held your shares on capital account for tax purposes.
5. This Ruling does not:
- address the Australian tax implications of any subsequent exchange (by way of ‘transmutation’) or other dealings with the Avita US shares or Avita US CDIs you received as a result of exchanging your ADS or Avita AU shares
 - apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 27 to 50 of this Ruling.
- Note:** Division 230 will generally not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies to entities that enter into the scheme from 1 July 2019 to 30 June 2021.

Ruling

CGT event A1 happened on the disposal of Avita AU shares or ADS

7. CGT event A1 happened when you transferred your Avita AU shares or ADS to Avita US under the scheme described in this Ruling (subsection 104-10(1)).
8. The time when CGT event A1 happened was the Implementation Date, being 29 June 2020 (paragraph 104-10(3)(b)).
9. You made a capital gain from CGT event A1 happening to your Avita AU shares or ADS if the capital proceeds from the disposal of the Avita AU shares or ADS exceeded the cost base of the Avita AU shares or ADS (subsection 104-10(4)).
10. You made a capital loss from CGT event A1 happening to your Avita AU shares or ADS if the capital proceeds from the disposal of the Avita AU shares or ADS were less than the reduced cost base of the Avita AU shares or ADS (subsection 104-10(4)).
11. The capital proceeds from CGT event A1 happening to each Avita AU share or ADS you held is the market value of the scrip consideration, being an Avita US CDI or Avita US share which you received, or were entitled to receive, in exchange for your Avita AU share or ADS (paragraph 116-20(1)(b)). The market value is worked out on the Implementation Date.

Availability of full or partial scrip for scrip CGT roll-over

12. If you made a capital gain from the disposal of your Avita AU shares or ADS, you may choose to obtain scrip for scrip CGT roll-over (sections 124-780 and 124-785). No

scrip for scrip CGT roll-over is available to the extent you made a capital loss from the exchange of your Avita AU shares or ADS.

13. Subject to the qualification in paragraph 15 of this Ruling, you may choose partial scrip for scrip CGT roll-over for that part of the capital gain that is reasonably attributable to the receipt of the Avita US CDIs or Avita US shares (subsection 124-790(1)). See paragraphs 21 and 22 of this Ruling if you received cash as some or all of the proceeds in exchange for your Avita AU shares or ADS.

14. You are not entitled to choose scrip for scrip CGT roll-over if any capital gain you make from a CGT event happening to the replacement Avita US CDIs or Avita US shares you received would be disregarded, except because of a subsequent CGT roll-over (paragraph 124-795(2)(a)).

If you choose scrip for scrip CGT roll-over

Capital gain partially disregarded

15. The capital gain you made from the disposal of Avita AU shares or ADS is disregarded to the extent that you received replacement Avita US CDIs or Avita US shares (eligible proceeds) (subsection 124-785(1)).

16. The capital gain you made is not disregarded to the extent that you received cash for the disposal of your Avita AU shares or ADS (subsection 124-790(1)).

Cost base and reduced cost base of Avita US CDIs and Avita US shares

17. If you choose scrip for scrip CGT roll-over, you attribute the first element of the cost base and reduced cost base of your original Avita AU shares or ADS to the replacement Avita US CDIs or Avita US shares that you received in a reasonable way. This is limited to the original Avita AU shares or ADS you exchanged and for which you obtained the CGT roll-over (taking into account any variances in the number of shares subsequently held) (subsections 124-785(2) and (4)).

18. The cost base and reduced cost base of the Avita AU shares or ADS which you exchanged is reduced by so much of the cost base or reduced cost base that is reasonably attributable to the cash you received (subsection 124-785(3)).

Acquisition date of your Avita US CDIs and Avita US shares

19. If you choose scrip for scrip CGT roll-over, you are taken to have acquired the Avita US CDIs or Avita US shares you received on the date when you acquired your Avita AU shares or ADS for the purposes of making a discount capital gain (table item 2 of subsection 115-30(1)).

20. For other CGT purposes, you are taken to have acquired the Avita US CDIs or Avita US shares you received at the time they were provided to you, being the Implementation Date (table item 2 of section 109-10).

Cash component

21. No scrip for scrip CGT roll-over is available to the extent you received cash in exchange for your Avita AU shares or ADS.

22. Where you received:

- both cash and Avita US CDIs, or
- both cash and Avita US shares

you may choose partial scrip for scrip CGT roll-over for the Avita US CDIs and / or Avita US shares you received. For the cash received in exchange for part of your Avita AU shares or ADS, you make

- a capital gain if the cash you received exceeds the portion of the cost base of your Avita AU shares or ADS that is reasonably attributable to the cash (worked out pursuant to subsection 124-790(2)), or
- a capital loss if the cash you received is less than the portion of the reduced cost base of the Avita AU shares or ADS that is reasonably attributable to the cash (worked out pursuant to subsection 124-790(2)).

If you do not choose or cannot choose scrip for scrip CGT roll-over

Capital gain or capital loss not disregarded

23. You are required to take into account any capital gain or capital loss you made as a result of the disposal of your Avita AU shares or ADS in working out your net capital gain or net capital loss for the income year ended 30 June 2021 (sections 102-5 and 102-10).

24. You are entitled to treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, that for CGT purposes you acquired (or were taken to have acquired) the Avita AU shares or ADS that you disposed of at least 12 months before the Implementation Date.

25. For other CGT purposes, you are taken to have acquired the Avita US CDIs or Avita US shares you received at the time they were provided to you, being the Implementation Date (table item 2 of section 109-10).

Cost base and reduced cost base of your Avita US CDIs and Avita US shares

26. The first element of the cost base and reduced cost base of the replacement Avita US CDIs or Avita US shares received is equal to the market value of the Avita AU shares or ADS exchanged that is reasonably attributable to the Avita US CDIs or Avita US shares at the time of their acquisition (paragraph 110-25(2)(b), subsection 110-55(2) and subsection 112-30(1)). The market value of the Avita AU shares or ADS is worked out on the Implementation Date.

Scheme

27. The following description of the scheme is based on information provided by the applicant. If the scheme was not carried out as described, this Ruling cannot be relied upon.

Relevant entities

Avita AU

28. Avita AU is an Australian resident company incorporated in Australia on 21 December 1992.

29. Ordinary shares in Avita AU were listed on the Australian Securities Exchange (ASX) on 9 August 1993 as its primary listing while its ADS traded on the National Association of Securities Dealers Automated Quotations System (NASDAQ) as a secondary listing from 1 October 2019.

30. As at 11 May 2020, Avita AU had the following securities on issue:

- 2,133,434,899 ordinary shares (including shares represented by ADS)
- 125,994,582 options
- 44,642,174 restricted stock units, and
- 862,415 warrants.

31. One ADS represented 20 ordinary shares in Avita AU.

32. As at 17 April 2020, the largest 10 shareholders (inclusive of nominees) held approximately 76.12% of all ordinary shares in Avita AU. The largest shareholder, a nominee, held 38.66% of the shares. The nominee holds Avita AU ordinary shares on behalf of ADS holders.

Avita US

33. Avita US is a newly-formed public company, incorporated in Delaware in the United States of America on 17 April 2020, for the sole purpose of the scheme of arrangement.

34. Following the scheme of arrangement, Avita US is the ultimate holding and parent company of the Avita Group and owns all the shares in Avita AU.

35. As at 11 May 2020, Avita US had not issued any shares or securities.

36. Avita US is listed on the NASDAQ as its primary listing and on the ASX as its secondary listing. Avita US interests trade on the ASX as CDIs.

Scheme of arrangement

37. Avita AU and Avita US entered into a Scheme Implementation Deed on 20 April 2020 under which Avita US proposed to acquire all of the ordinary shares in Avita AU by way of a scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001*.

38. On 15 June 2020, Avita AU shareholders approved the scheme of arrangement at the scheme meeting. On 22 June 2020, the Federal Court of Australia approved the scheme of arrangement for the purposes of paragraph 411(4)(b) of the *Corporations Act 2001*.

39. All Eligible Shareholders (being Avita AU shareholders (including holders of ADS) other than Ineligible Foreign Shareholders (as defined in the Scheme Booklet dated 11 May 2020)) were entitled to participate in the scheme on substantially the same terms.

40. On the Implementation Date:

- An Avita AU shareholder received 5 Avita US CDIs, via an authorised nominee, for every 100 Avita AU shares held at the Record Date.
- ADS holders received Avita US shares. The ADS Depository (who holds Avita AU shares for the benefit of ADS holders) received 1 Avita US share for every 100 Avita AU shares held at the Record Date. The ADS Depository transferred the Avita US shares to ADS holders who received 1 Avita US share for every 5 ADS held at the Record Date upon surrender of the ADS.

- Where, and to the extent that, an Eligible Shareholder had a fractional entitlement to an Avita US share or Avita US CDIs (Fractional Shareholder) which was insufficient to equate to a whole Avita US share, the fractional entitlements were not transferred to shareholders but were instead aggregated and provided to a Sale Agent who sold them under a sale facility.
- Similarly, Eligible Shareholders who held less than 100 Avita AU shares on the Record Date were also Fractional Shareholders, and their holdings were 'cashed out' by way of transferring their fractional entitlement to a Sale Agent to be sold pursuant to a sale facility.

41. This Ruling does not apply to Ineligible Foreign Shareholders.

42. Following the implementation of the scheme of arrangement, 1 Avita US share trading on the NASDAQ was equivalent to 5 Avita US CDIs trading on the ASX.

43. Post-scheme of arrangement, Avita AU was delisted from the ASX and the NASDAQ.

Other matters

44. A CDI is a 'Chess Unit of Foreign Security' for the purposes of subsection 124-780(6).

45. Avita US will not make a choice under subsection 124-795(4).

46. Avita AU shareholders and ADS holders dealt with Avita US at arm's length.

47. No assets, employees or any other items were transferred as part of the scheme of arrangement.

48. Neither the Avita Group nor any associates of the group intended or planned for any further restructuring of the group to occur, subsequent to or as part of the scheme of arrangement.

49. At the time when the scheme of arrangement is implemented, Eligible Shareholders will receive either Avita US CDIs or Avita US shares in the ratios set out in paragraph 40 of this Ruling and the number of Avita US CDIs and Avita US shares on issue at this time will be consistent with these ratios.

50. The closing price of an Avita AU share traded on the ASX and an ADS traded on the NASDAQ on the last day of trading prior to the Implementation Date was A\$0.45 and US\$6.19 respectively.

Appendix – Explanation

ⓘ *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 full or partial scrip for scrip CGT roll-over under Subdivision 124-M

51. Scrip for scrip CGT roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base of the replacement share. No scrip for scrip roll-over may be chosen where a shareholder makes a capital loss.

52. The scheme that is subject of this Ruling satisfies the requirements for roll-over under section 124-780.

53. The Commissioner accepts that the market value of the Avita AU shares or ADS immediately prior to the Implementation Date of the scheme is worked out by reference to the closing share price of Avita AU shares traded on the ASX or ADS traded on the NASDAQ on the last day of trading before the Implementation Date. The closing price of Avita AU shares or ADS on the last day of trading before the Implementation Date was A\$0.45 and US\$6.19 respectively.

If you choose scrip for scrip CGT roll-over***Capital gain partially disregarded***

54. In working out that amount of the capital gain that is subject to scrip for scrip CGT roll-over (where it is not a partial roll-over), the following method may be applied:

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

Where:

- **Eligible proceeds** are the market value of Avita US CDIs or Avita US shares
- **Eligible proceeds cost base** is the cost base of Avita AU shares or ADS

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

Capital gain (partial roll-over) = Eligible proceeds – Eligible proceeds cost base

Where:

- **Eligible proceeds** are the market value of Avita US CDIs or Avita US shares
- **Eligible proceeds cost base** is the cost base of Avita AU shares or ADS less the cash consideration

Cost base and reduced cost base of Avita US CDIs or Avita US shares

56. The relevant portion of the cost base or reduced cost base of Avita AU shares or ADS which are exchanged for Avita US CDIs or Avita US shares and cash is the amount that is reasonably attributable to each respectively (subsection 124-790(2)).

57. You may work out the first element of the cost base (and reduced cost base) of your Avita AU shares or ADS which is reasonably attributable to the cash consideration as follows:

$$\text{Cost base of Avita AU shares or ADS exchanged} \times \frac{\text{Cash consideration}}{\text{Market value of Avita US CDIs or Avita US shares plus cash consideration}}$$

58. The remaining portion of the cost base is used to determine the first element of the cost base (and reduced cost base) for the replacement Avita US CDIs or Avita US shares issued as consideration for the transfer of the Avita AU shares or ADS (subsections 124-785(2) to (4)). We accept that the cost base of the Avita US CDIs or Avita US shares can be worked out as follows:

$$\text{Cost base of Avita AU shares or ADS exchanged} \times \frac{\text{Market value of Avita US CDIs or Avita US shares}}{\text{Market value of Avita US CDIs shares or Avita US shares plus cash consideration}}$$

If you do not choose or cannot choose scrip for scrip CGT roll-over

Cost base and reduced cost base of your Avita US CDIs or Avita US shares

59. You may work out the first element of the cost base and reduced cost base of the Avita US CDIs or Avita US shares as follows:

$$\text{Market value of Avita AU shares or ADS exchanged} \times \frac{\text{Market value of Avita US CDIs or Avita US shares}}{\text{Market value of Avita US CDIs or Avita US shares plus cash consideration}}$$

60. In working out the market value of an Avita AU share or ADS, we accept the following method:

$$\text{Market value of Avita AU share or ADS} = \text{Cash consideration per Avita AU share or ADS exchanged} + \frac{1}{\text{Number of Avita AU shares or ADS exchanged for each Avita US CDIs or Avita US share}} \times \text{Market value of Avita US CDIs or Avita US share on the Implementation Date}$$

References

Previous draft:

Not previously issued as a draft

Legislative references:

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 - 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)(b)
 - ITAA 1997 112-30(1)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
 - ITAA 1997 124-780(6)
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
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 - ITAA 1997 124-785(3)
 - ITAA 1997 124-785(4)
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 - ITAA 1997 124-790(2)
 - ITAA 1997 124-795(2)(a)
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 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
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 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 411(4)(b)

ATO references

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