



Class Ruling

Income tax: scrip for scrip: merger of Sylvastate Limited and Whitefield Limited

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ⓘ This publication provides you with the following level of protection:

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.

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);
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- section 112-30 of the ITAA 1997;
- section 115-30 of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 116-40 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997, unless otherwise specified.

Class of entities

3. The class of entities to which this Ruling applies is the shareholders in Sylvastate Limited (Sylvastate) who:

- (a) disposed of their shares in Sylvastate to Whitefield Limited (Whitefield) in exchange for shares in Whitefield;
- (b) held their shares in Sylvastate on capital account at the time of disposal;
- (c) were 'residents of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at the time of disposal; and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Sylvastate 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 paragraphs 9 to 28 of 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.

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Date of effect

8. This Ruling applies from 1 July 2010 to 30 June 2011. The Ruling continues to apply after 30 June 2011 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

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application, dated 23 December 2010;
- 2010 Annual Report of Sylvastate;
- 2010 Annual Report of Whitefield;
- Merger Implementation Agreement between Sylvastate and Whitefield dated 14 February 2011; and
- Scheme Booklet: For the scheme of arrangement in relation to the proposed merger of Sylvastate and Whitefield.

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

Overview

10. The scheme that is the subject of this Ruling involves the merger of Sylvastate with Whitefield.

Relevant entities

Sylvastate

11. Sylvastate was founded in 1924 and, at the time of the scheme, was an Australian resident company listed on the Australian Securities Exchange (ASX). It was an investment company with significant holdings in shares in other listed companies. As at 31 December 2010, Sylvastate's investment portfolio represented 91% of Sylvastate's total assets. Approximately 19.89% of that investment portfolio was made up of shares in Whitefield.

12. Sylvastate had, at the time of the scheme, 15,798,150 fully paid ordinary shares on issue. Each ordinary share carried the same rights to vote, receive dividends and receive capital.

13. Sylvastate did not have any other class of shares on issue.

Whitefield

14. Whitefield is an Australian resident company listed on the ASX. It is an investment company which holds a large portfolio of shares in listed companies (including a small number of shares in Sylvastate at the time of the scheme).

15. Whitefield is not a member of a wholly-owned group as defined in section 975-500.

Disposal of shares in Sylvastate

The scheme

16. On 6 July 2010, Sylvastate and Whitefield announced their intention to pursue a merger of the two companies.

17. Following this initial announcement, Sylvastate and Whitefield entered into a merger implementation agreement on 14 February 2011, under which it was agreed that the proposed merger, which would involve the transfer of all Sylvastate shares (other than those already held by Whitefield) to Whitefield, would be implemented by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*.

18. On 15 April 2011, a court ordered scheme meeting of Sylvastate shareholders was held and a resolution passed by the requisite majority of Sylvastate shareholders approving the proposed scheme of arrangement.

19. On 10 May 2011, the scheme was implemented (the Implementation Date). As a result of the scheme, Sylvastate became a wholly-owned subsidiary of Whitefield.

The scheme consideration

20. In consideration for the transfer of their shares to Whitefield, Sylvastate shareholders, other than Whitefield and ineligible overseas shareholders, who held Sylvastate shares on the record date for the scheme of 7pm on 6 May 2011 (Record Date), received shares in Whitefield.

21. The number of Whitefield shares issued to each eligible Sylvastate shareholder was determined by the following formula:

$$CS = SS \times \left(\frac{\text{Sylvastate Adjusted Net Asset Backing}}{\text{Sylvastate Shares on issue as at the Calculation Date}} \times \frac{\text{Whitefield Shares on issue as at the Calculation Date}}{\text{Whitefield Adjusted Net Asset Backing}} \right)^*$$

* To be rounded to five decimal places

Where:

CS was the number of Whitefield shares issued to the relevant Sylvastate shareholder under the scheme;

SS was the number of Sylvastate shares held by the relevant Sylvastate shareholder as at the scheme Record Date;

Sylvastate Adjusted Net Asset Backing (NAB) was the NAB of Sylvastate as at 31 March 2011, adjusted to reflect Sylvastate's investment in Whitefield being valued on the basis of the NAB per Whitefield share, less residual scheme costs and Sylvastate's interim dividend;

Whitefield Adjusted NAB was the NAB of Whitefield as at 31 March 2011, adjusted to reflect Whitefield's investment in Sylvastate being valued on the basis of the NAB per Sylvastate share, less the face value of Whitefield's issued preference shares, residual scheme costs and Whitefield's final dividends;

NAB was the NAB for accounting purposes, which takes into account a deduction for future tax liabilities that would be incurred in the event the entire portfolio was realised at the date on which the asset backing is determined, and which also takes into account as an asset any future tax benefit from tax losses; and

Calculation Date means 31 March 2011.

22. Based on this formula, an eligible Sylvastate shareholder was entitled to receive 1.15467 shares in Whitefield for each Sylvastate share that they held on the scheme Record Date.

23. Fractional entitlements to Whitefield shares were rounded up or down to the nearest whole number of Whitefield shares, after aggregating all holdings of the relevant shareholder. An entitlement to half a Whitefield share was rounded up.

Ineligible overseas shareholders

24. Certain foreign shareholders (Ineligible Overseas Shareholders) were not entitled to receive Whitefield shares under the scheme. Instead, the Whitefield shares that would otherwise have been issued to those shareholders were issued to, and held by, a nominee. The nominee then sold the Whitefield shares on the ASX and paid the cash proceeds to the Ineligible Overseas Shareholders.

Sylvastate's interim dividend

25. Sylvastate declared an interim dividend of \$0.105 per share on 24 March 2011. This dividend was paid to entities who were Sylvastate shareholders on the relevant record date 11 April 2011. It represented the ordinary interim dividend payable by Sylvastate in respect of the six month period ended 28 February 2011 and its payment was not conditional on the scheme being approved or implemented.

Other matters

26. For the purposes of subsections 124-780(4) and 124-780(5), no original interest holder in Sylvastate was, just before the relevant arrangement started, a member of a linked group which includes Sylvastate and Whitefield.

27. There are no 'significant stakeholders' or 'common stakeholders' in relation to the Scheme within the meaning of those expressions in section 124-783.

28. Just before the arrangement started, both Sylvastate and Whitefield had at least 300 members and did not have concentrated ownership of the nature described in section 124-810.

Ruling

CGT event A1 happened on the disposal of Sylvastate shares to Whitefield

29. CGT event A1 happened as a result of the disposal by a Sylvastate shareholder of their Sylvastate shares to Whitefield under the scheme described in this Ruling (subsections 104-10(1) and (2)).

30. The time of the event was when the Sylvastate shares were transferred to Whitefield on the Implementation Date of the scheme (paragraph 104-10(3)(b)).

Capital gain or capital loss

31. A Sylvastate shareholder made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of each Sylvastate share exceeded its cost base. A Sylvastate shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the Sylvastate share (subsection 104-10(4)).

Capital proceeds

32. The capital proceeds from the disposal of each Sylvastate share are the market value of the Whitefield shares received (worked out as at the time that CGT event A1 happened) that is reasonably attributable to the disposal of the Sylvastate share (subsections 116-20(1) and 116-40(1)).

33. In working out the market value of the Whitefield shares received that is reasonably attributable to the disposal of each Sylvastate share, the Commissioner accepts the following formula:

$$\begin{array}{ccc} \text{Market value of} & & \text{Total number of Whitefield shares} \\ \text{Whitefield share} & \times & \text{received} \\ & & \hline & & \text{Total number of Sylvastate shares} \\ & & \text{exchanged for Whitefield shares} \end{array}$$

34. The Commissioner accepts that the amount of \$3.34178 (Whitefield's adjusted NAB on a per share basis on the Implementation Date) is indicative of the market value of a Whitefield share on the Implementation Date of the scheme.

35. The capital proceeds from the disposal of each Sylvastate share to Whitefield under the scheme does not include the interim dividend of \$0.105 per share received by a Sylvastate shareholder.

If a capital gain was made***Scrip for scrip roll-over***

36. Subject to the qualification in paragraph 37 of this Ruling, a Sylvastate shareholder who made a capital gain from the disposal of a Sylvastate share to Whitefield is eligible to choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

37. Scrip for scrip roll-over cannot be chosen if any capital gain the Sylvastate shareholder made from the replacement Whitefield shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

38. The only capital proceeds received by a Sylvastate shareholder were shares in Whitefield. Therefore, if a Sylvastate shareholder chooses scrip for scrip roll-over, the capital gain they made upon the disposal of a Sylvastate share to Whitefield is disregarded completely (subsection 124-785(1)).

Discount capital gain

39. A Sylvastate shareholder who made a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivisions 115-A and, if applicable, 115-C are satisfied.

Cost base of Whitefield shares

40. The method for calculating a Sylvastate shareholder's cost base and reduced cost base of the Whitefield shares received under the scheme depends on whether the shareholder chooses scrip for scrip roll-over.

Scrip for scrip roll-over is not chosen

41. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the Sylvastate shareholder's cost base and reduced cost base of each Whitefield share is equal to the market value of the part of the Sylvastate shares that is reasonably attributable to the acquisition of the Whitefield share, worked out as at the time of their acquisition on the Implementation Date (subsections 110-25(2), 110-55(2) and section 112-30).

42. The Commissioner accepts that the amount of \$3.86854 (Sylvastate's adjusted NAB on a per share basis on the Implementation Date) is indicative of the market value of each Sylvastate share given in exchange for the Whitefield shares.

Scrip for scrip roll-over is chosen

43. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each Whitefield share is equal to the part of the cost base of the relevant Sylvastate share that is reasonably attributable to the acquisition of the Whitefield share (subsections 124-785(2) and 124-785(4)).

Acquisition date of Whitefield shares

44. The acquisition date of the Whitefield shares received in exchange for the Sylvastate shares is the date that the shares were issued to the Sylvastate shareholders, being the Implementation Date (item 2 of the table in section 109-10).

45. However, for the purpose of determining whether a capital gain made from any later disposal of their Whitefield shares is eligible to be treated as a 'discount capital gain', Sylvastate shareholders who choose scrip for scrip roll-over are taken to have acquired their Whitefield shares when they acquired the corresponding Sylvastate shares (item 2 of the table in subsection 115-30(1)).

Sylvastate shares acquired before 20 September 1985

46. Any capital gain or capital loss made on the disposal of a Sylvastate share acquired before 20 September 1985 (pre-CGT Sylvastate share) is disregarded (paragraph 104-10(5)(a)).

47. There is no scrip for scrip roll-over for Sylvastate shares that were acquired before 20 September 1985 (paragraph 124-780(3)(a)).

48. The first element of the cost base (and reduced cost base) for a Whitefield share acquired in exchange for pre-CGT Sylvastate shares is the market value of the replacement Whitefield share just after it was acquired (subsection 124-800(1)).

49. The Commissioner accepts that the amount of \$3.34178 (Whitefield's adjusted NAB on a per share basis on the Implementation Date) is indicative of the market value of each replacement Whitefield share just after it was acquired.

Commissioner of Taxation25 May 2011

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.*

Availability of scrip for scrip roll-over

50. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables a shareholder to disregard a capital gain from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

51. 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) shares in a company are exchanged for shares in another company;
- (b) the exchange occurs as part of a single arrangement;
- (c) conditions for roll-over are satisfied;
- (d) further conditions are not applicable or are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

52. Under the scheme that is the subject of this Ruling, the conditions for roll-over under Subdivision 124-M are satisfied. The Ruling section provides a detailed explanation of the Commissioner's decision in this regard. Therefore, no further explanation is warranted other than the following matters relating to the determination of market value.

Calculating the market value of Whitefield and Sylvastate shares

Whitefield shares

53. As noted in this Ruling, it is necessary to determine the market value of Whitefield shares for the purposes of calculating:

- (a) the capital proceeds from the disposal of each Sylvastate share (paragraph 32 of this Ruling); and
- (b) the first element of the cost base (and reduced cost base) for a Whitefield share acquired in exchange for pre-CGT Sylvastate shares (paragraph 48 of this Ruling).

54. Generally, a market-based methodology (such as a one day Volume Weighted Average Price on the implementation date of the scheme) is considered to be the most appropriate measure of the market value of a security that is listed on the ASX when determining the CGT consequences arising from a merger under a scheme of arrangement. However in the current circumstances, trading in Whitefield shares is relatively illiquid, which may mean that the share price on the ASX at any particular time may not be reflective of the market value of the shares and is open to manipulation.

55. Whitefield is an investment company. Its assets are largely made up of shares in companies listed on the ASX and cash or cash equivalents. Given these attributes, the Commissioner accepts that a market valuation that is based on the adjusted NAB of Whitefield on the Implementation Date is a more appropriate basis than a market-based methodology for valuing Whitefield shares. On this basis, the Commissioner accepts that the amount of \$3.34178 (the adjusted NAB of Whitefield on a per share basis on the Implementation Date) is indicative of:

- (a) the market value of each Whitefield share on the Implementation Date of the scheme for the purposes of calculating the capital proceeds from the disposal of each Sylvastate share; and
- (b) the market value of each replacement Whitefield share just after it was acquired for the purposes of calculating the first element of the cost base (and reduced cost base) for a Whitefield share acquired in exchange for pre-CGT Sylvastate shares.

Sylvastate shares

56. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the Sylvastate shareholder's cost base and reduced cost base for each Whitefield share is equal to the market value of the part of the Sylvastate shares that is reasonably attributable to the acquisition of the Whitefield share. The market value is worked out as at the time of the acquisition (subsections 110-25(2), 110-55(2) and section 112-30).

57. The Commissioner accepts that the amount of \$3.86854 is indicative of the market value of each Sylvastate share given in exchange for the Whitefield shares. This value is based on the adjusted NAB of Sylvastate on a per share basis on the Implementation Date which, for reasons similar to those noted in paragraphs 54 and 55 of this Ruling, is considered to be an appropriate basis for valuing the shares in Sylvastate.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- arrangement
- capital gains
- CGT event A1- disposal of a CGT asset
- Disposal of assets
- Exchange of shares
- CGT roll-over relief
- Disposal of Shares

Legislative references:

- | | |
|--------------------------|--------------------------------|
| - ITAA 1936 6(1) | - ITAA 1997 110-25(2) |
| - ITAA 1997 | - ITAA 1997 110-55 |
| - ITAA 1997 104-10(1) | - ITAA 1997 110-55(2) |
| - ITAA 1997 104-10(2) | - ITAA 1997 112-30 |
| - ITAA 1997 104-10(3)(b) | - ITAA 1997 Subdiv 115-A |
| - ITAA 1997 104-10(4) | - ITAA 1997 115-30 |
| - ITAA 1997 104-10(5)(a) | - ITAA 1997 115-30(1) |
| - ITAA 1997 109-10 | - ITAA 1997 Subdiv 115-C |
| - ITAA 1997 110-25 | - ITAA 1997 116-20 |
| | - ITAA 1997 116-20(1) |
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| | - ITAA 1997 Subdiv 124-M |
| | - ITAA 1997 124-780 |
| | - ITAA 1997 124-780(3)(a) |
| | - ITAA 1997 124-780(4) |
| | - ITAA 1997 124-780(5) |
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| | - ITAA 1997 124-785(1) |
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| | - ITAA 1997 124-795(2)(a) |
| | - ITAA 1997 124-800(1) |
| | - ITAA 1997 124-810 |
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ATO references

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