


CR 2007/109 - Income tax: Stockland Corporation Limited Non-Executive Director Security Acquisition Plan

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Class Ruling

Income tax: Stockland Corporation Limited Non-Executive Director Security Acquisition Plan

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① 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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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 is:

- Division 13A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936);
- Subdivision DB of Division 13A of Part III of the ITAA 1936; and
- Section 139CD of the (ITAA 1936).

All subsequent legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is all non-executive directors of Stockland Corporation Limited (Stockland) and Stockland Funds Management Limited (SFML) who acquire stapled securities under the Stockland Non-Executive Director Security Acquisition Plan (the Plan).
4. In this Ruling, a person belonging to this class of entities is referred to as a participant.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. 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 14 to 23 of this Ruling.
7. 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

9. This Ruling applies to the income year ended 30 June 2008 and all subsequent income years.
10. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:
 - it is not later withdrawn by notice in the *Gazette*; or
 - the relevant provisions are not amended.

11. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

14. 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 of the scheme:

- the request for Class Ruling from Ernst & Young dated 6 June 2007;
- the Stockland Non-Executive Director Security Acquisition Plan Rules (the Plan rules); and
- pro-forma letter inviting participants to acquire stapled securities under the Plan.

15. The purpose of the Plan is to encourage eligible directors of Stockland and SFML to acquire and hold Stockland stapled securities through regular and effective salary sacrifice arrangements within the terms of Taxation Ruling TR 2001/10.

16. Stockland and SFML being the employers of participants in the Plan, do not have any employees other than non-executive directors.

17. Stockland stapled securities (stapled securities) comprise:

- an ordinary share in Stockland; and
- a unit in the Stockland Trust;

and are listed on the Australian Securities Exchange (ASX).

18. Under the Plan rules, the Plan may be managed by a trustee or a plan company as defined in the Plan rules.

19. Stockland may pay to the trustee or the plan company amounts to be determined by Stockland from time to time to fund the acquisition of stapled securities for the purposes of the Plan. The trustee or the plan company (as the case may be) must use any such amounts received to acquire stapled securities and have them registered in the name of participants.

20. A participant has no right or interest in any stapled security or other property acquired under the Plan until such time as any stapled securities acquired under the Plan are registered in the participant's name.

21. Participation in the plan is on a voluntary basis and a participant will be able to salary sacrifice up to a maximum of 90% of their nominal annual fee entitlements in order to participate in the Plan. A participant will make no direct payments to acquire stapled securities under the Plan.

22. Stapled securities acquired under the Plan cannot be disposed of or dealt with in any way until the expiry of the restriction period as described in the Plan rules. This disposal restriction will be enforced by having a holding lock imposed by the Share Registry on stapled securities acquired under the Plan.

23. The applicant has advised that immediately after the acquisition of a stapled security, no participant will:

- hold a legal or beneficial interest in more than 5% of the shares in Stockland or 5% of the units in the Stockland Trust; or
- be in a position to cast or control the casting of, more than 5% of the maximum number of votes that may be cast at a general meeting of Stockland.

Ruling

24. Where a participant acquires a stapled security under the Plan, the stapled security will be treated as a qualifying share for the purposes of section 139CD.

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.*

Division 13A amended to include stapled securities

25. *Tax Laws Amendment (2007 Measures No.1) Act 2007* amended the ITAA 1936 and other tax Acts to extend the employee share scheme concessions and related capital gains tax treatment to certain stapled securities.

26. The inclusion of stapled securities in the scheme of Division 13A of Part III (Division 13A) is primarily through the insertion of Subdivision DB, which applies to acquisitions of stapled securities or rights to acquire stapled securities, on or after 1 July 2006.

27. The concessional treatment provided under Division 13A is limited to those stapled securities that:

- include an ordinary share;
- are listed for quotation in the official list of the ASX; and
- are treated as qualifying shares for the purposes of section 139CD (as modified by Subdivision DB of Division 13A).

Stapled security

28. For the purposes of Division 13A, a security that consists of two or more interests is a stapled security (subsection 139GCD(1)) if:

- each interest is either a share in a company or a unit in a unit trust; and
- at least one of the interests is an ordinary share; and
- all the interests are stapled together; and
- the security is listed for quotation in the official list of the ASX.

29. In accordance with subsection 139DSB(1), Division 13A applies with some modifications, to a stapled security in the same way as the Division applies to an ordinary share.

30. The Commissioner accepts that a stapled security acquired by a participant under the Plan will satisfy the definition of a stapled security for the purposes of Division 13A, as the applicant has advised that:

- each stapled security comprises an ordinary share in Stockland and a unit in the Stockland Trust;

- each Stockland share and unit in the Stockland Trust are stapled together; and
- each stapled security is listed for quotation on the ASX.

31. Thus, Division 13A can apply in relation to a stapled security acquired under the Plan in the same way that it applies in relation to an ordinary share.

Stapled entity

32. The notion of a stapled entity, being a company or a unit trust that has its shares or units included in a stapled security (pursuant to subsection 139GCD(2)), is an intrinsic component of the operation of the modification provisions in Subdivision DB of Division 13A.

33. In relation to a stapled security acquired by a participant under the Plan, Stockland and the Stockland Trust are stapled entities as defined.

34. For the purposes of Division 13A, (pursuant to subsection 139DSB(2)), a reference to a company is a reference to all of the stapled entities, as though they are one notional company. In this case, Stockland and the Stockland Trust are treated collectively as if they are one notional company.

35. This means that an employee of either Stockland or the Stockland Trust is considered to be employed by the notional company. It also means that, in determining whether an employee has acquired a stapled security in the holding company of their employer, the stapled entities are considered together in determining whether they are the holding company.

Qualifying conditions

36. A stapled security will be treated as a qualifying share for the purposes of Division 13A, if it meets the conditions in section 139CD. However, the operation of section 139CD in such cases is subject to the modifications set out in Subdivision DB of Division 13A.

37. Section 139CD sets out the conditions that must be satisfied for a share to be a qualifying share. These conditions are:

- the share is acquired by a taxpayer under an employee share scheme (subsection 139CD(2));
- the company in which the share is acquired is the employer of the taxpayer or a holding company of the employer of the taxpayer (subsection 139CD(3));
- all the shares available for acquisition under the scheme are ordinary shares (subsection 139CD(4));

(for a stapled security the following conditions are subject to the modifications set out in paragraphs 38 to 44 of this Ruling)

- at the time the share was acquired, at least 75% of the permanent employees of the employer (subsection 139CD(5)) were, or at some earlier time had been, entitled to acquire;
 - shares or rights under the scheme; or
 - shares or rights in the employer, or a holding company of the employer, under another employee share scheme (paragraph 139CD(5)(b));
- immediately after the acquisition of the shares, the taxpayer:
 - does not hold a legal or beneficial interest in more than 5% of the shares in the company (subsection 139CD(6)); or
 - is not in a position to cast, or control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of the company (subsection 139CD(7)).

Modifications to qualifying conditions

38. The first modification relates to the permanent employee test in subsection 139CD(5).

39. The effect of the modification (section 139DSE) is that the employer is not taken to include any other stapled entities and that the 75% requirement will be satisfied if it is satisfied for the employing entity alone.

40. However, where the employer is not a stapled entity, for the purposes of paragraph 139CD(5)(b), the stapled entities are treated together and can be a notional holding company of the employer.

41. The second modification relates to the limitation on share holdings in subsection 139CD(6).

42. The effect of the modification (section 139DSF) is that the condition will be satisfied in relation to a stapled security, if an employee does not hold:

- more than 5% of the shares in a company that is a stapled entity for the stapled security; and
- more than 5% of units in a unit trust that is a stapled entity for the stapled security.

43. The third modification relates to the limitation on voting rights in subsection 139CD(7).

44. The effect of this modification (section 139DSG) is that the condition will be satisfied in relation to a stapled security, if an employee cannot control more than 5% of the maximum number of votes at a general meeting of each company that is a stapled entity for the stapled security.

Application of the qualifying conditions to a stapled security

The first condition – employee share scheme

45. This condition requires that a share or a stapled security is acquired under an employee share scheme.

46. Under the Plan, participants are able to salary sacrifice up to a maximum of 90% of their nominal fee entitlements to acquire stapled securities. The applicant has advised that the salary sacrifice arrangement (SSA) is intended to be an effective SSA in terms of TR 2001/10.

47. Consideration paid or given by an employee does not include amounts sacrificed under an effective SSA. Further, a participant is not required to make any other payments towards the cost of a stapled security under the Plan. Therefore, a participant will acquire a stapled security for less than market value, pursuant to subsection 139C(3).

48. The purpose of the Plan is to encourage eligible directors of Stockland and SFML to acquire and hold stapled securities. Therefore, such stapled securities are considered to be acquired in respect of employment for the purposes of subsection 139C(1).

49. As a stapled security acquired under the Plan will be acquired at a discount and in respect of employment, the stapled security will be acquired under an employee share scheme pursuant to section 139C. Thus, the first of the qualifying conditions will be satisfied.

The second condition – company employer

50. This condition requires that a company (in which a share is acquired by an employee), or a stapled entity (for a stapled security acquired by an employee), is the employer, or the holding company of the employer of the employee who acquired the share or stapled security.

51. For the purposes of this condition (subsection 139CD(3)), the reference to the company is taken to include (by subsection 139DSB(2)) each stapled entity for the stapled security.

52. Therefore, in relation to a stapled security acquired by a participant under the Plan, the test will be satisfied as:

- participants employed by Stockland are employed by a stapled entity for the stapled security; and

- participants employed by SFML are employed by a company for which Stockland is the holding company.

53. Thus, the second qualifying condition will be satisfied.

The third condition – ordinary shares

54. This condition requires that all shares available under the scheme are ordinary shares.

55. However, where stapled securities are available under a scheme, by virtue of subsection 139DSB(1) (the effect of which is made clear by the example that follows that subsection), this condition will be satisfied if all the securities available under the scheme are stapled securities within the meaning of subsection 139GCD(1), (which must include an ordinary share).

56. The Commissioner accepts that the only securities available under the Plan are (Stockland) stapled securities, thus the third condition will be satisfied.

The fourth condition – permanent employee test

57. This condition basically requires that at the time a share or stapled security is acquired under an employee share scheme, at least 75% of the permanent employees of the employer, are or were entitled to participate in an employee share scheme of the employer.

58. The modification to this condition in relation to a stapled security (section 139DSE) means that the employer is not taken to include any other stapled entities and that the 75% requirement will be satisfied if it is satisfied for the employing entity alone.

59. Thus, where a participant is employed by Stockland and at least 75% of the permanent employees of Stockland are offered stapled securities under the Plan, this test will be satisfied in respect of those participants.

60. Similarly, where a participant is employed by SFML and at least 75% of the permanent employees of SFML are offered stapled securities under the Plan, this test will be satisfied in respect of those participants.

61. For the purposes of the 75% test, a permanent employee of a company is defined as a full-time employee or permanent part-time employee with at least 36 months of service (subsection 139GB(1)). However, a director is specifically excluded from being a permanent employee of a company pursuant to subsection 139GB(2).

62. The applicant has advised that Stockland and SFML being the employers of the participants, do not have any employees other than the non-executive directors.

63. As there are no permanent employees (as defined) of Stockland or SFML, the Commissioner accepts that the fourth condition will be satisfied in respect of all participants in the Plan.

The fifth condition – 5% ownership test

64. This condition requires that at the time a share or stapled security is acquired under an employee share scheme, an employee cannot legally or beneficially hold more than 5% of the shares in a company, or the units in a unit trust that is a stapled entity.

65. The modification to this condition (section 139DSF) is such that the condition will be satisfied if a taxpayer does not hold more than 5% of the shares in a company (Stockland) that is a stapled entity and 5% of units in a unit trust (the Stockland Trust) that is a stapled entity.

66. The applicant has advised that immediately after the acquisition of a stapled security, no participant will hold a legal or beneficial interest in more than 5% of the shares in Stockland or 5% of the units in the Stockland Trust. Thus, the fifth condition will be satisfied.

The sixth condition – 5% voting rights test

67. This condition requires that an employee cannot control more than 5% of the voting rights in the company.

68. The modification to this condition (section 139DSG) is such that the condition will be satisfied if a taxpayer cannot control more than 5% of the maximum number of votes at a general meeting of each company that is a stapled entity.

69. The applicant has advised that immediately after the acquisition of a stapled security, no participant will be in a position to cast or control the casting of, more than 5% of the maximum number of votes that may be cast at a general meeting of Stockland. Thus, the Commissioner accepts that the last of the conditions will be satisfied.

Conclusion

70. The qualifying conditions in section 139CD as relevantly modified by the operation of Subdivision DB of Division 13A, will be satisfied in relation to a stapled security acquired by a participant under the Plan. Thus, such a stapled security will be treated as a qualifying share for the purposes of Division 13A.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2001/10

Subject references:

- acquisition of stapled securities
 - employee stapled security ownership
 - employee share schemes
 - employees
 - income
 - stapled security discounts on employee shares schemes
 - shareholders
 - shares
- ITAA 1936 139CD
 - ITAA 1936 139CD(2)
 - ITAA 1936 139CD(3)
 - ITAA 1936 139CD(4)
 - ITAA 1936 139CD(5)
 - ITAA 1936 139CD(5)(b)
 - ITAA 1936 139CD(6)
 - ITAA 1936 139CD(7)
 - ITAA 1936 139DSB(1)
 - ITAA 1936 139DSB(2)
 - ITAA 1936 139DSE
 - ITAA 1936 139DSF
 - ITAA 1936 139DSG
 - ITAA 1936 Pt III Div 13A Subdiv DB
 - ITAA 1936 139GB(1)
 - ITAA 1936 139GB(2)
 - ITAA 1936 139GCD(1)
 - ITAA 1936 139GCD(2)
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)

Legislative references:

- ITAA 1936 Pt III Div 13A
 - ITAA 1936 139C
 - ITAA 1936 139C(1)
 - ITAA 1936 139C(3)
 - Copyright Act 1968
 - Tax Laws Amendment (2007 Measures No. 1) Act 2007
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ATO references

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