


***CR 2008/68 - Income tax: capital gains tax:
conversion of Swan Taxis Co-operative Limited to
Swan Taxis Limited, an unlisted public company
registered under the Corporations Act 2001***

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Class Ruling

Income tax: capital gains tax: conversion of Swan Taxis Co-operative Limited to Swan Taxis Limited, an unlisted public company registered under the *Corporations Act 2001*

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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 provision dealt with in this Ruling is:

- Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997).

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is former members of Swan Taxis Co-operative Limited (STCL), who held STCL shares and were re-issued with new share certificates to reflect the change in corporate structure and name of the former co-operative to Swan Taxis Ltd (STL).

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme 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 19 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 27 March 2007 to 30 June 2009. The Ruling continues to apply after 30 June 2009 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:

- application for class ruling dated 19 March 2007;
- Swan Taxi Co-operative Limited Memorandum and Articles of Association incorporating amendments to 20 March 1996;
- Minutes of Extraordinary General Meeting of Swan Taxi Co-operative Limited dated 27 March 2007;
- 'Swan Taxis Restructure' booklet dated March 2007;
- Register of members of STCL as at 24 April 2007;
- copies of forms lodged with the Australian Securities and Investments Commission (ASIC) in relation to the restructure; and
- correspondence and emails from the applicant in relation to the application for class ruling.

10. STCL, a co-operative regulated by the *Companies (Co-operative) Act 1943 (WA)* (Co-op Act) operates a taxi dispatch service in Western Australia. STCL proposed to change its corporate structure to an unlisted public company as a result of the introduction by the government of a new legislative scheme for co-operatives on 29 November 2007.

11. An Extraordinary General Meeting (EGM) was held on 27 March 2007 and the following special resolutions were passed by members of STCL:

- (1) in accordance with section 176A of the Co-op Act and section 601BC of the *Corporations Act 2001* (Corporations Act), change of status of STCL from a co-operative registered under the Co-op Act to a public company limited by shares (STL) registered under the Corporations Act (the Conversion);
- (2) change of name from 'Swan Taxis Co-operative Limited' to 'Swan Taxis Limited';
- (3) repeal of the existing Memorandum and Articles of Association of STCL and adoption of the Constitution of STL in the form tabled at the EGM; and

- (4) amendment of Article 4.5 of the new Constitution of STL to implement takeover protection for shareholders for a period of 12 months following shareholder approval of conversion to an unlisted public company. This protection comprised a maximum cap on share ownership of 8,000 shares of all classes per shareholder (previously 4,000 ordinary shares under the co-operative), and that purchasers of shares must be either taxi plate owners or existing shareholders.
12. Following the EGM, STCL applied to be registered as a public company limited by shares under the Corporations Act.
13. STL was registered by ASIC as an Australian public company on 16 May 2007.
14. On Conversion, the assets of STCL formed the assets of the unlisted public company STL. The assets of STCL were not diminished by the Conversion.
15. On 16 May 2007, the shareholders of STCL received replacement share certificates evidencing the conversion of STCL to the public company STL. The replacement share certificates were issued to the former shareholders of STCL in the same number and in the same classes as those held in STCL.
16. The Conversion did not result in the cancellation of STCL shares. The STCL shares were reclassified into STL shares, and the Conversion only effected a variation in the rights attaching to the shares.
17. No shareholder in STCL received any additional shares in STL, or shares of a class in STL, that they did not hold prior to the Conversion. Also, no shareholder received any other consideration from the Conversion.
18. At the time of the Conversion STCL had a number of classes of shares on issue:
- Class A;
 - Class B;
 - Class G; and
 - Ordinary shares.

There were also Class D and Class T shares in STCL however, as no D and T class shares were on issue at the time of the Conversion, these share classes were not replicated in the public company STL.

19. STCL also had Treasury shares on issue that represented shares in itself that STCL acquired from members out of its reserve funds, as permitted by section 174 of the Co-op Act and authorised in Article 16 of STCL's Articles of Association. It is a breach of section 259A of the Corporations Act for a company to acquire shares in itself so this share class has not been included in the Constitution of STL. As these shares were on issue and held by STCL in itself prior to the introduction of section 259A of the Corporations Act, ASIC has accepted as part of the registration process that STL can continue to hold these shares but cannot acquire any further shares in itself.

Ruling

20. No CGT event outlined in Division 104 happens to the class of entities to which this Ruling applies as a result of their STCL shares being reclassified into STL shares.

Commissioner of Taxation

5 November 2008

Appendix 1 – Explanation

ⓘ *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.*

Reclassification of STCL shares

21. The Conversion did not involve the cancellation of STCL shares.
22. Relevantly, the reclassification of each STCL share into STL share and the issuing of new share certificates did not involve the ownership of the STCL shares ending under section 104-25, nor was it a disposal of the STCL shares under section 104-10. Taxation Ruling TR 94/30, at paragraphs 8 and 9, provides that a variation of rights attaching to shares does not result in a full or part disposal of the share.
23. Accordingly, the reclassification of STCL shares into STL shares did not give rise to a CGT event for the former shareholders of STCL.

Appendix 2 – Detailed contents list

24. 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 94/30; TR 2006/10

Subject references:

- capital gains
 - CGT events
 - co-operative companies
 - incorporation
 - shareholders
 - shares
- ITAA 1997 Div 104
 - ITAA 1997 104-10
 - ITAA 1997 104-25
 - Corporations Act 2001
 - Corporations Act 2001 259A
 - Corporations Act 2001 601BC
 - Companies (Co-operative) Act 1943 (WA)
 - Companies (Co-operative) Act 1943 (WA) 174
 - Companies (Co-operative) Act 1943 (WA) 176A
 - TAA 1953
 - Copyright Act 1968

Legislative references:

- ITAA 1997
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ATO references

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ATOlaw topic: Income tax ~~ Capital Gains Tax ~~ CGT event A1 – disposal of a CGT asset
Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 – end of a CGT asset