


***CR 2009/10 - Income tax: scrip for scrip roll-over:
exchange of shares in Select Design Technologies
Limited for shares in International Innovations
Limited***

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Class Ruling

Income tax: scrip for scrip roll-over: exchange of shares in Select Design Technologies Limited for shares in International Innovations 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 provisions 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;
 - Subdivision 115-A of the ITAA 1997;
 - section 116-20 of the ITAA 1997;
 - Subdivision 124-M of the ITAA 1997; and

- Division 855 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies consists of the ordinary shareholders of Select Design Technologies Limited (SDTL) who:

- are registered on the SDTL share register on the date that their SDTL shares are disposed of under the scheme to which this Ruling relates; and
- hold their SDTL shares on capital account on that date.

In this Ruling, a shareholder belonging to the class of entities is referred to as a 'SDTL shareholder'.

Qualifications

4. 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 8 to 18 of this Ruling.

5. 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

7. This Ruling applies from 1 July 2008 to 30 June 2010. The Ruling continues to apply after 30 June 2010 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, Joyce Dickson Chartered Accountants. The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application, dated 15 May 2008;
- Draft copy of the Explanatory Statement for the Scheme of Arrangement; and
- Correspondence with the applicant between 11 July 2008 and 18 February 2009.

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

Overview

9. The scheme that is the subject of this Ruling involves the merger of SDTL with International Innovations Limited (IIL).

SDTL

10. SDTL is an Australian resident public company, which incorporated in 1999.

11. As at 4 December 2008, SDTL had on issue:

- 388,149,178 fully paid ordinary shares; and
- options to acquire ordinary shares, exercisable at various prices.

Each ordinary share carries the same rights to vote, receive dividends and receive capital. SDTL does not have any other class of shares on issue.

12. Some SDTL shareholders are foreign residents.

IIL

13. IIL is an Australian resident public company, which incorporated in 2003.

14. As at 4 December 2008, IIL had 901,392,240 fully paid ordinary shares on issue. Each share carries the same rights to vote, receive dividends and receive capital. IIL does not have any other class of shares on issue.

Disposal of SDTL shares

15. On 11 September 2007, at a joint General Meeting of the shareholders of SDTL and IIL, there was a unanimous vote approving the merger of SDTL and IIL by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*.

16. Under the Scheme of Arrangement, on the Implementation Date – expected to be before 30 June 2010 – SDTL shareholders will transfer all of their SDTL shares to IIL.

17. In consideration for the transfer, SDTL shareholders will receive one ordinary share in IIL for each SDTL share. Therefore, IIL will issue 388,149,178 ordinary shares to SDTL shareholders.

18. All options issued by SDTL will be cancelled, for no consideration, under the same scheme as the exchange of shares.

Ruling

CGT event A1 happens on the disposal of SDTL shares to IIL

19. CGT event A1 happens if there is a disposal of a CGT asset. This involves a change in the ownership of an asset from one entity to another. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (section 104-10).

20. The disposal of SDTL shares (and hence CGT event A1) will happen when the SDTL shareholders transfer their SDTL shares to IIL on the Implementation Date under the proposed Scheme of Arrangement (paragraph 104-10(3)(b)).

Capital gain or capital loss

21. A SDTL shareholder will make a capital gain from CGT event A1 happening if the capital proceeds in respect of the disposal of a SDTL share exceed its cost base. A SDTL shareholder will make a capital loss if the capital proceeds in respect of the disposal of a SDTL share are less than its reduced cost base (subsection 104-10(4)).

Capital proceeds

22. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening will be the market value of the property (the IIL shares) received or entitled to be received in respect of the disposal of the SDTL shares. The market value of the property is worked out as at the time of CGT event A1 happening (the Implementation Date).

Availability of scrip for scrip roll-over if a capital gain is made

23. Subject to the qualification in paragraph 24 of this Ruling, SDTL shareholders who make a capital gain from the disposal of a SDTL share to IIL are eligible to choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

24. Scrip for scrip roll-over cannot be chosen if any capital gain a SDTL shareholder might make from the replacement IIL shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

25. The only capital proceeds received by a SDTL shareholder will be shares in IIL. Therefore, if a SDTL shareholder chooses scrip for scrip roll-over, the capital gain they will make upon the disposal of a SDTL share to IIL is disregarded completely (subsection 124-785(1)).

Discount capital gain

26. A SDTL shareholder who makes 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 of Subdivision 115-A are met. In particular, the SDTL shares must have been acquired by the shareholder at least 12 months before their disposal to IIL.

Cost base of IIL shares***Scrip for scrip roll-over is not chosen***

27. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the shareholder's cost base and reduced cost base of each IIL share is equal to the market value of the property (the SDTL share) given in respect of acquiring each IIL share, worked out as at the time of their acquisition on the Implementation Date (subsections 110-25(2) and 110-55(2)).

Scrip for scrip roll-over is chosen

28. If a SDTL shareholder chooses the roll-over, the first element of the cost base and reduced cost base of a replacement IIL share is worked out by reasonably attributing to it the cost base of the SDTL share for which it was exchanged (subsections 124-785(2) and 124-785(4)).

Acquisition date of IIL shares

29. SDTL shareholders will acquire the IIL shares which are to be received in exchange for their SDTL shares on the date when a contract is entered into, or if there is no contract, when the IIL shares are issued to them (item 2 of the table in section 109-10).

30. The acquisition date will be the Implementation Date, when IIL issues the IIL shares to the SDTL shareholders in consideration for the transfer of their SDTL shares to IIL.

31. However, for the purpose of determining whether a capital gain made from any later disposal of their IIL shares is a discount capital gain, SDTL shareholders who choose scrip for scrip roll-over are taken to have acquired their IIL shares when they acquired the original SDTL shares involved in the roll-over (item 2 of the table in subsection 115-30(1)).

Foreign resident shareholders

32. Under subsection 124-795(1), a SDTL shareholder cannot obtain scrip for scrip roll-over if, just before they stop owning their SDTL shares, the shareholder is a foreign resident unless, just after they acquire their replacement IIL shares, the IIL shares are 'taxable Australian property'.

33. The term 'taxable Australian property' is defined in the table in section 855-15. It covers five categories of CGT assets:

- (1) taxable Australian real property which is held directly;
- (2) indirect Australian real property interests which are not covered by item 5 of the table;
- (3) CGT assets used in carrying on a business through a permanent establishment in Australia, and which are not covered by item 1, 2 or 5 of the table;
- (4) options or rights to acquire a CGT asset covered by item 1, 2 or 3 of the table; and
- (5) CGT assets covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident).

34. Therefore, some SDTL shareholders who are foreign residents may not be able to obtain scrip for scrip roll-over. However, under section 855-10, an entity disregards a capital gain or capital loss from a CGT event if they are a foreign resident just before the CGT event happens, and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

35. Accordingly, a SDTL shareholder will disregard a capital gain from CGT event A1 happening on the disposal of SDTL shares to IIL if they are a foreign resident just before the CGT event happens, and if the SDTL shares are not 'taxable Australian property'.

Commissioner of Taxation

4 March 2009

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.*

Scrip for scrip roll-over – Subdivision 124-M

36. The tax consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

37. The significant tax consequence 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.

38. 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 are exchanged for shares in another company;
- (b) the exchange is in consequence of a single arrangement;
- (c) conditions for the roll-over are satisfied;
- (d) further conditions, if applicable, are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

39. The scheme satisfies the requirements for roll-over under Subdivision 124-M. Further, the scheme raises no novel issues of tax law interpretation and no further explanation of the application of those tax laws beyond that contained in the Ruling part of this document is necessary.

Appendix 2 – Detailed contents list

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References

- Previous draft:*
- ITAA 1997 104-10(4)
- Not previously issued as a draft
- ITAA 1997 104-165(3)
 - ITAA 1997 109-10
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 110-25
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55
 - ITAA 1997 110-55(2)
- Subject references:*
- capital proceeds
 - CGT Event A1-disposal of a CGT asset
 - CGT events
 - CGT cost base
 - CGT roll-over relief
 - companies
 - ordinary shares
 - scrip for scrip roll-over
 - shares
 - shareholders
 - takeovers & mergers
- ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(1)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 Div 855
 - ITAA 1997 855-10
 - ITAA 1997 855-15
- Legislative references:*
- ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - Corporations Act 2001 Pt 5.1
 - TAA 1953
 - Copyright Act 1968
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ATO references

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