


CR 2010/19 - Income tax: scrip for scrip: exchange of Seven Network Limited shares for equivalent Seven Group Holdings Limited shares

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Class Ruling

Income tax: scrip for scrip: exchange of Seven Network Limited shares for equivalent Seven Group Holdings Limited shares

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❶ 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;
 - Subdivision 115-A of the ITAA 1997;

- section 116-20 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

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

3. On 6 January 2010, the Assistant Treasurer announced the Government's intention to introduce legislation to reform the tax law as it relates to the requirements for the scrip for scrip roll-over in respect of takeovers and mergers approved under the *Corporations Act 2001* (Corporations Act). The changes as announced will apply to CGT events that happen on or after 6 January 2010 (Assistant Treasurer's Media Release No. 004 *New Merger Tax Rules to Make it Easier for Shareholders*). This Ruling does not address the consequences that arise as a result of the scheme under the proposed law reform.

Class of entities

4. The class of entities to whom this Ruling applies is registered shareholders of Seven Network Limited (SNL) who:

- (a) participate in the scheme (refer to paragraphs 10 to 23 of this Ruling);
- (b) hold their SNL ordinary shares (SNL Shares) on capital account (SNL Shareholders) and/or SNL Transferable Extendable Listed Yield Shares 3 (SNL TELYS3) on capital account (SNL TELYS3 Shareholders);
- (c) exchange their:
 - SNL Shares for ordinary shares in Seven Group Holdings Limited (SGH Shares) under the scheme; and/or
 - SNL TELYS3 for Seven Group Holdings Limited Transferable Extendable Listed Yield Shares 4 (SGH TELYS 4) under the scheme;
- (d) are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on the scheme implementation date; and
- (e) are not 'significant stakeholders' or 'common stakeholders' in relation to the scheme within the meaning of these expressions in Subdivision 124-M.

Qualifications

5. The Commissioner makes this Ruling based on the proposed scheme precisely 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 10 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 from 1 July 2009 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

10. The following description of the scheme is based on information provided by the Applicant for this Ruling. The following documents, or relevant parts of them form part of and are to be read with the description:
- application for a Class Ruling dated 28 January 2010 lodged by the Applicant on behalf of SNL;
 - letter from the Applicant dated 15 February 2010;

- Scheme Implementation Deed dated 21 February 2010;
- Amended Scheme Implementation Deed dated 12 March 2010; and
- Seven Network Limited Scheme Booklet dated 16 March 2010.

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

11. The scheme that is the subject of this Ruling involves the merger of SNL with WesTrac Holdings Pty Limited (WesTrac Holdings).

SNL

12. As at 10 March 2010 SNL had the following shares on issue which were listed on the Australian Securities Exchange (ASX):

- fully paid ordinary shares (SNL Shares)
- fully paid preference shares (SNL TELYS3)

13. All SNL Shares and all SNL TELYS3 were acquired on or after 20 September 1985.

Disposal of SNL Shares and SNL TELYS3

14. On 22 February 2010, SNL and Australian Capital Equity Pty Limited (ACE), the parent company of WesTrac Holdings, jointly announced that they had entered into a Scheme Implementation Deed for a proposed merger of SNL and WesTrac Holdings.

15. The merger involves the following:

- SGH, a recently incorporated company, acquires the issued share capital of WesTrac Holdings from ACE; and
- WesTrac Holdings acquires the SNL Shares and SNL TELYS3.

As a result, SGH will become the holding company of the combined WesTrac and SNL group.

16. The proposed merger is to be implemented by way of two separate schemes of arrangements under Part 5.1 of the Corporations Act between SNL, SNL Shareholders and SNL TELYS3 Shareholders (Scheme of Arrangements). The Scheme of Arrangements are subject to the approval of SNL Shareholders, SNL TELYS3 Shareholders, the Federal Court of Australia and various regulatory bodies.

SNL Shares

17. Under the first Scheme of Arrangement, on the Implementation Date of 13 May 2010, all SNL Shares will be transferred to WesTrac Holdings in exchange for SGH issuing new shares to SNL Shareholders.

18. SNL Shareholders will receive one SGH Share for each SNL Share they held on 6 May 2010 (the Scheme Record Date).

19. As a result, all SNL Shares will be owned by WesTrac Holdings.

SNL TELYS3

20. Under a separate Scheme of Arrangement (Second Scheme of Arrangement), on the Implementation Date of 13 May 2010, all SNL TELYS3 will be transferred to WesTrac Holdings in exchange for SGH issuing SGH TELYS4 to the SNL TELYS3 Shareholders.

21. SNL TELYS3 Shareholders will receive one SGH TELYS4 for each SNL TELYS3 they held on 6 May 2010 (the Scheme Record Date).

22. As a result, all SNL TELYS3 will be owned by WesTrac Holdings.

Foreign shareholders

23. SGH Shares and SGH TELYS4 will not be issued to certain shareholders of SNL whose address is in a place outside Australia, New Zealand, the UK, US, Hong Kong and Canada (foreign shareholders). The relevant SGH Shares and SGH TELYS4 will instead be issued to a nominee agent for sale on the ASX and net proceeds from the sale will be remitted to SGH and then paid by SGH to each foreign shareholder.

Ruling

Capital Gains Tax

CGT event A1 happens on the disposal of SNL Shares and SNL TELYS3

24. CGT event A1 will happen as a result of the disposal by a

- SNL Shareholder of their SNL Shares; or
- by a SNL TELYS3 Shareholder of their SNL TELYS3,

to WesTrac Holdings under the scheme described in the Ruling (subsection 104-10(1)).

25. The time of the event will be when the SNL Shares or SNL TELYS 3 are transferred to WesTrac Holdings on the Implementation Date 13 May 2010 (paragraph 104-10(3)(b)).

Capital gain or capital loss

26. A SNL Shareholder or a SNL TELYS3 Shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a SNL Share or SNL TELYS3 exceeds its cost base. A SNL Shareholder or SNL TELYS3 Shareholder will make a capital loss if those capital proceeds are less than its reduced cost base (subsection 104-10(4)).

Capital Proceeds

27. The capital proceeds for each SNL Share or SNL TELYS3 will be the market value of the SGH Share or SGH TELYS4 received in respect of CGT event A1 happening, worked out at the time of the CGT event (subsection 116-20(1)).

28. The Commissioner accepts that the market value of the SGH Shares on 13 May 2010 may be determined by reference to the volume weighted average price (VWAP) of SGH Shares traded on the ASX on that day.

29. The Commissioner accepts that the market value of the SGH TELYS4 on 13 May 2010 may be determined by reference to the VWAP of SGH TELYS4 traded on the ASX on that day.

If a capital loss is made

30. If a SNL Shareholder or SNL TELYS3 Shareholder makes a capital loss from the disposal of their SNL Shares or SNL TELYS3, they cannot choose scrip for scrip roll-over under Subdivision 124-M (subsection 124-780(3)).

If a capital gain is made

31. Subject to the qualification in paragraph 32 of this Ruling, a SNL Shareholder or SNL TELYS3 Shareholder who makes a capital gain from the disposal of a SNL Share or SNL TELYS3 may choose scrip for scrip roll-over under Subdivision 124-M (section 124-780).

32. Scrip for scrip roll-over cannot be chosen if any capital gain the SNL Shareholder or SNL TELYS3 Shareholder might make from the replacement SGH Share or SGH TELYS4 would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

If scrip for scrip roll-over is chosen

33. If a SNL Shareholder or SNL TELYS3 Shareholder chooses scrip for scrip roll-over, the capital gain made from the disposal of a SNL Share or SNL TELYS3 is disregarded (subsection 124-785(1)).

If scrip for scrip roll-over is not chosen

34. If a SNL Shareholder or SNL TELYS3 Shareholder does not choose scrip for scrip roll-over, the capital gain made from the disposal of a SNL Share or SNL TELYS3 is not disregarded.

Discount capital gain

35. SNL Shareholders or SNL TELYS3 Shareholders, who make a capital gain where roll-over is not chosen or cannot be chosen, may be eligible to treat the gain as a 'discount capital gain' provided that they satisfy the requirements of Subdivision 115-A.

Cost base of SGH shares***If scrip for scrip roll-over is chosen***

36. Where scrip for scrip roll-over is chosen, the first element of the SNL Shareholder's or SNL TELYS3 Shareholder's cost base and reduced cost base of each SGH Share or SGH TELYS4 is worked out by reasonably attributing to it the cost base of the SNL Share or SNL TELYS3 exchanged for the relevant SGH Share or SGH TELYS4 (subsections 124-785(2) and 124-785(4)).

If scrip for scrip roll-over is not chosen, or cannot be chosen

37. Where scrip for scrip roll-over is not, or cannot be, chosen the first element of the SNL Shareholder's or SNL TELYS3 Shareholder's cost base and reduced cost base of each SGH's Share or SGH's TELYS4 received is equal to the market value of the SNL Share or SNL TELYS3 exchanged for the relevant SGH Share or SGH TELYS4 (subsection 110-25(2) and subsection 110-55(2)).

38. The Commissioner will accept the market value of one SGH Share received by a SNL Shareholder on 13 May 2010 as the market value of the SNL Share exchanged. The market value of SGH Shares on 13 May 2010 may be determined by reference to the VWAP of SGH Shares traded on the ASX on that day.

39. The Commissioner will accept the market value of one SGH TELYS3 received by a SNL Shareholder on 13 May 2010 as the market value of the SGH TELYS4 exchanged. The market value of SGH TELYS4 on 13 May 2010 may be determined by reference to the VWAP of SGH TELYS4 traded on the ASX on that day.

Acquisition date of SGH shares

40. SNL Shareholders and/or SNL TELYS3 Shareholders will acquire their SGH Shares and/or SGH TELYS4 on the date those shares are issued to each SNL Shareholder and/or SNL TELYS3 Shareholder, that is, 13 May 2010 (item 2 of the table in section 109-10).

41. However, for the purposes of determining eligibility to a discount capital gain, SNL Shareholders or SNL TELYS3 Shareholders who choose scrip for scrip roll-over are taken to have acquired their SGH Shares or SGH TELYS4 when they acquired the corresponding SNL Share(s) or SNL TELYS3 (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation

26 May 2010

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.*

42. 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.

43. The significant tax consequence is the availability of scrip for scrip roll-over under Subdivision 124-M. Scrip for scrip roll-over 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 the exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

44. 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 conditions and exceptions that are relevant to the circumstances of the merger of SNL and WesTrac Holdings 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.

45. Under the scheme the conditions for roll-over under Subdivision 124-M are satisfied.

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:

- CGT asset
- CGT capital proceeds
- CGT cost base
- CGT event A1
- scrip for scrip roll-over
- takeovers and mergers

Legislative references:

- ITAA 1997
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
- ITAA 1997 110-55

- ITAA 1997 110-55(2)
- 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 124-780(3)
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(2)(a)
- ITAA 1936 6(1)
- Corporations Act 2001 Pt 5.1
- TAA 1953
- Copyright Act 1968

Other references:

- Assistant Treasurer's Media Release No. 004, New Merger Tax Rules to Make it Easier for Shareholders available at <http://assistant.treasurer.gov.au/>

ATO references

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