


CR 2010/68 - Income tax: exchange of shares in Suncorp-Metway Limited for shares in Suncorp Group Limited

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Class Ruling

Income tax: exchange of shares in Suncorp-Metway Limited for shares in Suncorp Group Limited

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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, 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 45B of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45C of the ITAA 1936;
- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 70-40 of the ITAA 1997;
- section 70-45 of the ITAA 1997;
- section 104-10 of the ITAA 1997;
- section 109-10 of the ITAA 1997;
- section 115-30 of the ITAA 1997;

- section 124-15 of the ITAA 1997;
- Subdivision 124-G of the ITAA 1997; and
- section 977-50 of the ITAA 1997.

All subsequent 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 are the ordinary shareholders of Suncorp-Metway Limited (SML) that:

- (a) participate in the exchange described at paragraph 23 of this Ruling;
- (b) are 'residents of Australia' for the purposes of subsection 6(1) of the ITAA 1936 at the time of disposal of their SML shares; and
- (c) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their SML shares.

(Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

4. In this Ruling, the entities belonging to this class are referred to as 'participating shareholders'.

5. This Ruling does not apply in respect of the ordinary shares of SML that were:

- (a) acquired before 1 July 2009 under an employee share scheme for the purposes of the former Division 13A of the ITAA 1936, are qualifying shares, no election covering them has been made under former section 139E of the ITAA 1936 and at the time of the exchange a 'cessation time' has not occurred in respect of them; or
- (b) acquired on or after 1 July 2009 under an employee share scheme for the purposes of Division 83A, Subdivision 83A-C applies to them and at the time of the exchange an 'ESS deferred taxing point' has not occurred in respect of them.

Qualifications

6. This Ruling does not provide guidance on whether the participating shareholders hold their shares as revenue assets (as defined by section 977-50) or that their shares constitute trading stock (as defined in section 995-1).

7. The class of entities defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the scheme described in paragraphs 11 to 30 of this Ruling.

8. 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

10. This Ruling applies from 1 July 2010 to 30 June 2011. However, this 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

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

- Class Ruling application dated 27 August 2010 from Greenwoods & Freehills Pty Limited;
- correspondence and emails from Greenwoods & Freehills Pty Limited dated 13 August 2010 and 15 October 2010;
- draft Explanatory Memorandum (which includes a copy of the Scheme of Arrangement, Notice of Scheme Meeting and Notice of General Meeting) provided on 13 October 2010;

- draft Restructure Implementation Deed provided on 15 October 2010; and
- draft Foreign Sale Facility Agreement provided on 18 November 2010.

Note: certain information received from Greenwoods & Freehills Pty Limited has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

The Suncorp Group

12. The Suncorp Group is a diversified financial services group that operates in general insurance, banking, life insurance and wealth management in Australia and New Zealand.

13. SML is the holding company for the Suncorp Group and the head company of a consolidated group for Australian income tax purposes.

14. SML is a public company limited by shares and admitted to the official list of the Australian Securities Exchange Limited (ASX); and has on issue:

- ordinary shares;
- reset preference shares; and
- convertible preference shares.

15. All of the shares in SML were acquired by their respective holders on or after 20 September 1985.

16. SML has, at all relevant times, been a registered approved deposit-taking institution (ADI), that is, a licensed bank, under the *Banking Act 1959*. This status authorises SML to carry on banking business in Australia. SML will continue to be an ADI from the time that the scheme takes place.

Suncorp Group Ltd (SGL)

17. SGL is a public company limited by shares and has one ordinary share on issue which is owned by SML.

The Reorganisation

18. On 28 October 2010, the Suncorp Group announced that it will undertake an internal reorganisation (the Reorganisation) which will include the following components:

- (a) the interposition of SGL as a non-operating holding company (NOHC), for the Suncorp Group (the interposition), with the effect that SML becomes a wholly-owned subsidiary of SGL; and

- (b) the separation of the SML group of companies into three principal sub-divisions – banking, general insurance and life insurance – each headed by a NOHC that is a wholly-owned subsidiary of SGL.

19. The tax consequences for the participating shareholders arise as a result of the first step in the Reorganisation, the interposition.

The interposition

20. The interposition of SGL between SML and its ordinary shareholders will be undertaken by way of a court-approved scheme of arrangement (the scheme of arrangement) under subsection 411(6) of the *Corporations Act 2001*.

21. All SML shareholders registered at 7:00pm (Sydney time) on 4 January 2011 (the Record Date) will participate in the exchange.

22. The scheme of arrangement requires the approval of the requisite majority of ordinary shareholders at the scheme meeting, which will be held on 15 December 2010, and court approval. It is also subject to the satisfaction of additional conditions precedent including regulatory approvals.

23. If approved, on 7 January 2011 (the Implementation Date), the interposition will be implemented according to the terms of the scheme of arrangement by the following steps:

- (a) all of the ordinary shares in SML will be transferred by their respective holders to SGL; and
- (b) in consideration for the ordinary shares, SGL will issue to each SML shareholder (or, in the case of certain foreign shareholders referred to at paragraph 24 of this Ruling, to a nominee or sale agent) one SGL share for each SML share transferred.

Ineligible foreign shareholders

24. Certain overseas shareholders (Ineligible Foreign Shareholders) are ineligible to receive SGL shares under the scheme. SGL shares that would otherwise have been issued to those shareholders in exchange for their ordinary shares will instead be issued to a nominee or sale agent.

25. Under the terms of the scheme, the shares will be sold within 20 days of the Implementation Date. The sale proceeds (net of expenses) will be remitted to the relevant Ineligible Foreign Shareholder.

Other matters

26. Following the exchange, SGL will buy back and cancel the SGL share owned by SML. The buy-back and cancellation will take place immediately after SGL shares are issued to SML shareholders.

27. The holders of reset preference shares and convertible preference shares will not participate in the scheme nor will they be entitled to vote on the scheme of arrangement.

28. SGL will be a NOHC within the meaning of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Restructure Act) once the scheme takes place.

29. A restructure instrument under Part 4A of the Restructure Act will be in force in relation to SGL for the purposes of the scheme within the meaning of that Act.

30. The tax consolidated group originally comprising SML (as head company) and its member entities will continue in existence after the scheme with SGL as its head company (section 703-70).

Ruling

CGT event A1

31. CGT event A1 happens when the SML shareholders exchange their SML shares for shares in SGL (subsections 104-10(1) and (2)). The time of the event is on or about 7 January 2011, the Implementation Date for the scheme of arrangement (paragraph 104-10(3)(b)).

Subdivision 124-G roll-over

32. The participating shareholders will be taken to have chosen roll-over under Subdivision 124-G for the exchange of each of their SML shares for SGL shares (subsection 124-360(2)).

SML shares that are not held as trading stock or revenue assets

33. The consequences under Subdivision 124-G for the participating shareholders who do not hold their SML shares as revenue assets or as trading stock are as follows:

- (a) any capital gain or capital loss made on the disposal of SML shares under the exchange will be disregarded (subsection 124-15(2)); and
- (b) the first element of the cost base and reduced cost base of each SGL share acquired under the exchange will be worked out as follows:
 - sum the cost bases of the SML shares just before the exchange; and

- apportion that sum over the SGL shares acquired under the exchange (subsection 124-15(3)).

34. The participating shareholders acquire the SGL shares when they become the owner of the SGL shares (item 2 of the table in section 109-10). This occurs on the Implementation Date for the scheme.

35. However, for the purposes of determining eligibility for the CGT discount to any later disposal of their SGL shares, participating shareholders will be taken to have acquired their SGL shares when they acquired the corresponding SML shares (item 2 of the table in subsection 115-30(1)).

SML shares held as revenue assets

36. For each participating shareholder who holds SML shares as revenue assets (as defined in section 977-50) immediately prior to the disposal of those shares under the exchange, there will be additional consequences under section 124-390, namely:

- (a) the disposal of the SML shares in exchange for the SGL shares results in the deferral of any profit or loss that arises as a direct consequence of the exchange; and
- (b) for each replacement share in SGL, the participating shareholder will be taken to have paid the total of the participating shareholder's subsection 124-390(4) amounts divided by the number of SGL shares that the participating shareholder acquires under the exchange (subsection 124-390(5)).

SML shares held as trading stock

37. The consequences under Subdivision 124-G for the participating shareholders who hold their SML shares as trading stock will, under paragraph 124-390(1)(a) and subsections (2) and (3) be as follows:

- (a) in the income year in which the Implementation Date occurs, the assessable income of a participating shareholder will include an amount equal to:
 - if the SML shares have been trading stock of that participating shareholder ever since the start of that income year – the total of the 'value' of the trading stock at the start of that income year (as defined in sections 70-40 and 70-45) and the amount (if any) by which its cost has increased since the start of that income year; or
 - otherwise, the cost of that participating shareholder's SML shares at the time of disposal (subsection 124-390(2));

- (b) for each SGL share acquired under the exchange, a participating shareholder will be taken to have paid an amount determined by dividing the total of the amounts included in the assessable income of that participating shareholder under subsection 124-390(2) by the number of SGL shares that participating shareholder acquires under the exchange (subsection 124-390(3)).

38. A participating shareholder who holds the SGL shares as trading stock will be entitled, in the income year in which the trading stock is considered to be 'on hand', to a deduction under section 8-1 equal to the total amounts included in the assessable income of that participating shareholder under subsection 124-390(2).

Anti-avoidance provision

39. The Commissioner will not make a determination under section 45B of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole or any part of the capital benefits received by the participating shareholders.

Commissioner of Taxation

1 December 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.*

Roll-over under Subdivision 124-G

40. The participating shareholders will be taken, under subsection 124-360(2), to have chosen to obtain the roll-over because:

- (a) the exchange will satisfy all of the necessary conditions in subsection 124-360(1), subsections 124-365(1) to 124-365(3), subsections 124-380(1) to 124-380(3) and subsection 124-380(5);
- (b) the participating shareholders are all residents at the time of disposing of their SML shares under the exchange, as required by paragraph 124-365(4)(a);
- (c) immediately before the completion time, SML will be the head company of the SML consolidated group; and
- (d) immediately after the completion time, SGL will be the head company of the consolidated group.

41. This conclusion follows in part as a result of the effect of section 124-382 which modifies the operation of Subdivision 124-G for 'ADI restructures'. Section 124-382 applies in this case on the basis that:

- (a) the interposed company (SGL) will be a NOHC within the meaning of the Restructure Act (paragraph 124-382(1)(a));
- (b) a restructure instrument under Part 4A of the Restructure Act will be in force in relation to SGL (paragraph 124-382(1)(b));
- (c) because of the restructure to which the instrument relates, an ADI (namely, SML) becomes a subsidiary of the interposed company (paragraph 124-382(1)(c)); and
- (d) the original company (SML) is the ADI (paragraph 124-382(1)(d)).

42. The application of section 124-382 has two significant consequences for the present arrangement.

43. Firstly, it provides that certain preference shares can be disregarded for the purposes of applying the conditions in Subdivision 124-G (subsection 124-382(2)). Accordingly, the reset preference shares and convertible preference shares are disregarded under this provision. Consequently, the conditions referred to in paragraph 40 of this Ruling will be satisfied even though the holders of these instruments will not exchange their shares under the arrangement.

44. The second consequence of section 124-382 relates to foreign shareholders. It provides that, where certain conditions relating to a nominee sale arrangement are put in place, shares in the original company held by foreign shareholders can also be disregarded for the purposes of Subdivision 124-G. It is considered that these conditions will be satisfied in relation to the shares in SML owned by the Ineligible Foreign Shareholders. Accordingly, the conditions of Subdivision 124-G will be satisfied even though the SGL shares will be received not by those shareholders but by a nominee or sale agent.

SML shares that are not held as trading stock or revenue assets

45. For the participating shareholders who do not hold their SML shares as trading stock or revenue assets the roll-over consequences for the participating shareholders are as set out in paragraphs 33 to 35 of this Ruling.

SML shares held as revenue assets

46. Subsections 124-390(4) and 124-390(5) provide an income tax deferral for the participating shareholders who hold their SML shares as revenue assets (as defined in section 977-50) immediately prior to the disposal of those shares under the exchange. The consequences of obtaining roll-over to give effect to section 124-390 is that the disposal of the SML shares in exchange for the SGL shares results in the deferral of any profit or loss that arises as a direct consequence of the exchange.

47. For each replacement share in SGL, the participating shareholder will be taken to have paid the total of the participating shareholder's subsection 124-390(4) amounts divided by the number of SGL shares that the participating shareholder acquires under the exchange (subsection 124-390(5)).

SML shares held as trading stock

48. For the participating shareholders who hold all or some of their SML shares as trading stock there will be additional consequences under subsection 124-360(2).

49. Under the trading stock provisions, the disposal of an SML share under the exchange by one of these participating shareholders would normally result in either:

- (a) the amount that the participating shareholder received for the SML share being included in assessable income under section 6-5 if the disposal was made in the ordinary course of business (see subsection 70-80(1)); or

- (b) the market value of the SML share being included in the participating shareholder's assessable income under subsection 70-90(1) if the disposal was made outside the ordinary course of business.

50. Subsection 124-390(2) changes the amount that is included in assessable income to an amount that is equal to:

- (a) if the SML share has been the participating shareholder's trading stock since the beginning of the income year in which the exchange occurs – the total of:
 - its value as trading stock at the start of the income year; and
 - the amount (if any) by which its cost has increased since the start of the income year; or
- (b) otherwise – its cost at the time of disposal.

51. Under subsection 124-390(3), the participating shareholder will be taken to have paid an amount for each of the SGL shares that the participating shareholder acquires in return for their SML shares that were trading stock at that time. That amount is calculated by the following formula:

$$\frac{\text{Total of the amounts included in the participating shareholder's assessable income under subsection 124-390(2) for the SML shares}}{\text{Number of those SGL shares}}$$

52. The total of the amounts included under subsection 124-390(2) is, broadly, either the 'cost' or the 'value' of those SML shares to the participating shareholder. Therefore, the participating shareholder will be taken to have paid that same 'cost' or 'value' for those SGL shares acquired under the exchange. In accordance with subsection 70-15(2), the participating shareholder will be entitled to a deduction for this acquisition 'cost' under section 8-1 provided that the SGL shares are considered to be on hand.

Anti-avoidance provision

53. Section 45B of the ITAA 1936 applies where certain capital payments are paid to shareholders in substitution for dividends. In broad terms, section 45B of the ITAA 1936 applies where:

- (a) there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936);
- (b) under the scheme, a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936); and

- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

54. Under the present scheme, each of the participating shareholders will receive SGL shares which will constitute the provision of a capital benefit.

55. If the amount of tax payable by a participating shareholder would be payable at a later time (as a result of the roll-over under Subdivision 124-G of the ITAA 1997) than it would be payable if the capital benefit had been a dividend, then the participating shareholder will obtain a tax benefit in accordance with paragraph 45B(2)(b) of the ITAA 1936.

56. However, under the present scheme, the requisite purpose of enabling the participating shareholder to obtain a tax benefit is not present. Having regard to the 'relevant circumstances' of the scheme, as set out in subsection 45B(8) of the ITAA 1936, it is apparent that none of the persons who entered into or carried out the scheme, or any part of it, did so for the requisite purpose of enabling a participating shareholder to obtain a tax benefit.

57. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit received by any of the participating shareholders.

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:

- assessable income
- general deduction
- replacement asset roll-over

Legislative references:

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 - ITAA 1997 124-15(3)
 - ITAA 1997 124-10(4)
 - ITAA 1997 Div 230
 - ITAA 1997 124-360
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 - ITAA 1997 124-360(1)(c)
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 - Copyright Act 1968
 - Corporations Act 2001 411(6)
 - Financial Sector (Business Transfer and Group Restructure) Act 1999
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ATO references

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