

CR 2013/24 - Income tax: scrip for scrip: merger of Texon Petroleum Limited and Sundance Energy Australia Limited

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Class Ruling

Income tax: scrip for scrip: merger of Texon Petroleum Limited and Sundance Energy Australia Limited

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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 provisions

2. The relevant provisions considered 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;
- Division 115 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 specified.

Class of entities

3. The class of entities to which this Ruling applies is the shareholders of Texon Petroleum Limited (Texon) who:

- (a) held their Texon shares on the Record Date, being 6:00 pm on 6 March 2013, and received shares in Sundance Energy Australia Limited (Sundance) in exchange for their Texon shares;
- (b) were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* on the Record Date;
- (c) held their Texon shares on capital account on the Record Date; and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Texon shares.

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

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

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 24 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 1 July 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 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.

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

10. The scheme that is the subject of this Ruling involves the merger of Texon with Sundance.

Relevant entities

Texon Petroleum Limited

11. Texon was incorporated in May 2006 and, at the time of the scheme, was an Australian resident company listed on the Australian Securities Exchange (ASX).

Sundance Energy Australia Limited

12. Sundance is an Australian resident company listed on the ASX.
13. Sundance is an Australian based oil and gas explorer and producer with prospects and operations in North Dakota, Colorado, Oklahoma and Kansas in the United States of America.
14. Following the merger, Sundance holds:
 - 100% of the shares of Texon, holding the Eagle Ford prospects; and
 - 100% of the shares in Sundance Energy, Inc, holding the existing Sundance prospects and operations.

The scheme

15. On 13 November 2012, Texon announced to the ASX that it had entered into a Scheme Implementation Agreement under which it was proposed that Sundance would acquire all of the shares in Texon by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* (the Scheme).
16. The Scheme was approved by the shareholders of Texon on 25 February 2013 and approved by the Federal Court of Australia on 27 February 2013.
17. The Effective Date of the Scheme was 27 February 2013.
18. The Scheme was implemented on 8 March 2013 (the Implementation Date). As a result of the Scheme, Texon became a wholly owned subsidiary of Sundance.

Scheme consideration

19. In consideration for the transfer of their shares to Sundance, Texon shareholders (other than ineligible foreign shareholders) received one Sundance share for every two Texon shares held on the Scheme Record Date.

Ineligible foreign shareholders

20. Certain foreign shareholders (Ineligible Foreign Shareholders) were not entitled to receive Sundance shares under the Scheme. Instead, the Sundance shares that would otherwise have been issued to those shareholders were issued to, and held by, the Sale Agent. The Sale Agent then sold the Sundance shares on the ASX and paid the net proceeds to the Ineligible Foreign Shareholders.

Other matters

21. For the purposes of subsections 124-780(4) and 124-780(5), no original interest holder in Texon was, just before the relevant arrangement started, a member of a linked group which included Texon and Sundance.
22. There are no 'significant stakeholders' or 'common stakeholders' in relation to the Scheme within the meaning of those expressions in section 124-783.
23. Just before the arrangement started, both Texon and Sundance had at least 300 members and did not have concentrated ownership of the nature described in section 124-810.
24. The daily Volume Weighted Average Price (VWAP) of the Sundance shares on the Implementation Date was \$1.05303.

Ruling

Capital Gains Tax (CGT) event A1 happened on the disposal of Texon shares

25. CGT event A1 happened as a result of the disposal by a Texon shareholder of their Texon shares to Sundance under the Scheme described in this Ruling (subsections 104-10(1) and 104-10(2)).
26. The time of the event was when the Texon shares were transferred to Sundance on the Implementation Date of the Scheme (paragraph 104-10(3)(b)).

Capital gain or capital loss

27. A Texon shareholder made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of each Texon share exceeded its cost base. A Texon shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the Texon share (subsection 104-10(4)).

Capital proceeds

28. The capital proceeds from the disposal of each Texon share is the market value (worked out at the time CGT event A1 happened) of the Sundance share received that is reasonably attributable to the disposal of the Texon share (paragraph 116-20(1)(b)).
29. The Commissioner accepts that the market value of a Sundance share on the Implementation Date may be determined by reference to the VWAP of Sundance shares traded on the ASX on that day. The VWAP of the Sundance shares on the Implementation Date was \$1.05303.

If a capital gain was made

Scrip for scrip roll-over

30. Subject to the qualification in paragraph 31 of this Ruling, a Texon shareholder who made a capital gain from the disposal of a Texon share is eligible to choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

31. Scrip for scrip roll-over cannot be chosen if any capital gain a Texon shareholder makes from the replacement Sundance shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

32. The only capital proceeds received by a Texon shareholder was shares in Sundance. Therefore, if a Texon shareholder chooses scrip for scrip roll-over, the capital gain they made upon the disposal of a Texon share to Sundance is disregarded completely (subsection 124-785(1)).

Discount capital gain

33. A Texon shareholder who made a capital gain where scrip for scrip roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivisions 115-A and, if applicable, 115-C are satisfied.

Cost base of Sundance shares

34. The method for calculating a Texon shareholder's cost base and reduced cost base of the Sundance shares received under the Scheme depends on whether the shareholder chooses scrip for scrip roll-over.

Scrip for scrip roll-over is chosen

35. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each Sundance share is equal to the part of the cost base of the relevant Texon share that is reasonably attributable to the acquisition of the Sundance share (subsections 124-785(2) and 124-785(4)).

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

36. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the Texon shareholder's cost base and reduced cost base of each Sundance share is equal to the market value of the Texon shares that is reasonably attributable to the acquisition of the Sundance share, worked out as at the time of their acquisition on the Implementation Date (subsections 110-25(2) and 110-55(2)).

Acquisition date of Sundance shares

37. The acquisition date of the Sundance shares received in exchange for the Texon shares is the date that the shares were issued to the Texon shareholders, being the Implementation Date (item 2 of the table in section 109-10).

38. However, for the purpose of determining whether a capital gain made from any later disposal of their Sundance shares is eligible to be treated as a 'discount capital gain', Texon shareholders who choose scrip for scrip roll-over are taken to have acquired their Sundance shares when they acquired the corresponding Texon shares (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation17 April 2013

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.*

Availability of scrip for scrip roll-over

39. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables a shareholder to disregard a capital gain made 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.

40. 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 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.

41. Under the scheme that is the subject of this Ruling, the conditions for roll-over under Subdivision 124-M are satisfied. The Ruling section provides a detailed explanation of the Commissioner's decision in this regard. Therefore, no further explanation is warranted.

Appendix 2 – Detailed contents list

42. 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 2006/10

Subject references:

- arrangement
- CGT capital proceeds
- CGT cost base
- CGT discount
- CGT event A1 – disposal of CGT Asset
- CGT roll-over relief
- disposal of shares
- scrip for scrip roll-over

Legislative references:

- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - 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 Subdiv 115-C
 - ITAA 1997 115-30
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-780(5)
 - ITAA 1997 124-783
 - ITAA 1997 124-810
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 Div 230
 - Corporations Act 2001 Pt 5.1
 - TAA 1953
 - Copyright Act 1968
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ATO references

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