


CR 2021/13 - GetSwift Limited - exchange of shares for GetSwift Technologies Limited shares and amendment of options and employee awards

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Class Ruling

GetSwift Limited – exchange of shares for GetSwift Technologies Limited shares and amendment of options and employee awards

📌 Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for Australian-resident shareholders and option holders (including holders of employee award options) in GetSwift Limited (GetSwift Australia) that exchanged their GetSwift Australia shares for GetSwift Technologies Limited (GetSwift Canada) shares and/or had their options in GetSwift Australia amended under the scheme to which this Ruling relates.
2. Full details of this scheme are set out in paragraphs 27 to 45 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - participated in the Scheme that is the subject of this Ruling
 - held fully-paid ordinary shares and/or options in GetSwift Australia, including options issued under GetSwift Australia's 2017 and 2019 Employee & Executive Ownership Plans (employee awards), as at 6 January 2021 (the Record Date) and any options you held were held on capital account. That

is, you did not hold your options as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and

- were a resident of Australia for the purposes of subsection 6(1) of the *Income Tax Assessment Act 1936* at the time the scheme was undertaken and were not a temporary resident within the meaning of the term 'temporary resident' in subsection 995-1(1).

5. This Ruling does not apply to any entity that is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 27 to 45 of this Ruling.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2020 to 30 June 2021.

Ruling

Disposal of GetSwift Australia shares – CGT Event A1

7. CGT event A1 happened when you disposed of each of your GetSwift Australia shares to GetSwift Canada under the scheme described in this Ruling (subsection 104-10(1)).

8. The time of CGT event A1 was when the shares were disposed of on 13 January 2021 (the Implementation Date) (paragraph 104-10(3)(b)).

9. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your GetSwift Australia share were more than the cost base of that share (subsection 104-10(4)). The capital gain is the amount of that excess.

10. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your GetSwift Australia share were less than the reduced cost base of that share (subsection 104-10(4)). The capital loss is the amount of the difference.

11. The capital proceeds in respect of CGT event A1 happening were the market value of any GetSwift Canada shares received by you as consideration for each GetSwift Australia share exchanged (subsection 116-20(1)). The market value of any GetSwift Canada shares received is worked out as at the time of CGT event A1, which was on the Implementation Date (paragraph 116-20(1)(b)).

Availability of Division 615 roll-over for shares

12. A disposal of shares to a company in exchange for shares in that company (and nothing else), as described in section 615-5, happened when you disposed of your GetSwift Australia shares to GetSwift Canada in exchange for GetSwift Canada shares.

Consequences if the roll-over is chosen

Capital gains tax consequences for shares held as capital assets

13. Where the roll-over under Division 615 is chosen, you will disregard any capital gain or capital loss made from the disposal of GetSwift Australia shares in exchange for

the requisite GetSwift Canada shares (sections 615-10 and 615-40, and subsection 124-15(2)).

14. The first element of the cost base and reduced cost base of each GetSwift Canada share that you acquired under the scheme will equal the total of the cost bases of all of your GetSwift Australia shares (worked out at the time of their disposal) apportioned over the number of GetSwift Canada shares issued to you in exchange (section 615-40 and subsection 124-15(3)).

15. For the purposes of determining any discount capital gains under Division 115, you are taken to have acquired those shares on the same date you acquired your corresponding GetSwift Australia shares (table item 2 of subsection 115-30(1)).

Shares held as trading stock

16. If you held your GetSwift Australia shares as trading stock (as defined in subsection 995-1(1)), and subsequently hold the GetSwift Canada shares acquired as trading stock, the amount included in assessable income on disposal of your GetSwift Australia shares is:

- taken to be the total value of each GetSwift Australia share at the start of the income year and the amount (if any) by which the cost has increased since the start of the income year, if those shares have been held as trading stock since the start of the income year that included the disposal time, or
- the cost of each GetSwift Australia share at the time of the disposal (subsection 615-50(1)).

17. The amount taken to have been paid by you for each of the GetSwift Canada shares acquired as trading stock is equal to the amount included in assessable income on disposal of the GetSwift Australia shares (as calculated in paragraph 16 of this Ruling) divided by the number of GetSwift Canada shares acquired as trading stock (subsection 615-50(2)).

Shares held as revenue assets

18. If you held your GetSwift Australia shares as revenue assets (as defined in section 977-50), and subsequently hold your GetSwift Canada shares acquired as revenue assets, the gross proceeds received for the disposal of each GetSwift Australia share is taken to be the amount needed to have a nil profit and nil loss for that disposal (subsection 615-55(1)).

19. For the purpose of calculating any profit or loss on the future disposal of each GetSwift Canada share acquired that is a revenue asset, the amount taken to have been paid for each GetSwift Canada share is the amount needed to have a nil profit and nil loss for that disposal (as calculated in paragraph 18 of this Ruling) divided by the number of GetSwift Canada shares acquired as revenue assets (subsection 615-55(2)).

Consequences if the roll-over is not chosen or cannot be chosen

20. Where the roll-over under Division 615 is not chosen, or cannot be chosen, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your GetSwift Australia shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

21. If you make a capital gain on disposal of your GetSwift Australia shares, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. In particular, the GetSwift Australia shares that were disposed of must have been acquired by you at least 12 months before the Implementation Date (section 115-25).

22. The date of acquisition of GetSwift Canada shares is the date you were issued your GetSwift Canada shares, being the Implementation Date (table item 2 of section 109-10).

23. The first element of the cost base and reduced cost base of each replacement GetSwift Canada share received is equal to the market value of the requisite number of GetSwift Australia shares given in respect of acquiring each GetSwift Canada share (subsections 110-25(2) and 110-55(2)).

Amendment of options and employee awards – CGT Event H2

24. The amending of the GetSwift Australia options and employee awards was an act, transaction or event which occurred in relation to each option and employee award but did not result in an adjustment to the cost base or reduced cost base of the option or employee award. Accordingly, CGT event H2 happened when the GetSwift Australia options and employee awards were amended (subsections 104-155(1) and (2)).

25. You did not make a capital gain when CGT event H2 happened to your options and/or employee awards as there were no capital proceeds received for the amending of the options or employee awards (subsection 104-155(3) and table item (event number) H2 of subsection 116-20(2)) and the market value substitution rule does not apply (section 116-25).

26. The acquisition date of your options will not be adjusted as a result of the amendments that were made to the options in relation to the re-domicile of GetSwift Australia.

Scheme

27. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

28. GetSwift Australia is an Australian-resident company for income tax purposes. It was incorporated on 6 March 2015 and its shares were listed on the Australian Securities Exchange (ASX) following its initial public offering in December 2016.

29. GetSwift Australia is a technology and services company that offers its clients a suite of products and services focused on business and logistics automation, data management and analysis, communications, information security and infrastructure optimisation, and also includes e-commerce and marketplace ordering, workforce management, data analytics and augmentation, business intelligence, route optimisation, cash management, task management, shift management, asset track, real-time alerts, cloud communications, and communications infrastructure.

30. Since its initial public offering, GetSwift Australia has undertaken a number of acquisitions and expanded its business and operations into North America, Europe, the Middle East, and Asia.

31. GetSwift Australia was the parent company of the GetSwift group prior to the scheme of arrangement being implemented. The group is not consolidated for Australian income tax purposes.

32. As at 17 November 2020, GetSwift Australia had the following securities on issue:

- 215,629,796 fully-paid ordinary shares, and
- 15,142,167 unlisted options.

33. The unlisted options included 1,379,667 options issued under the employee awards to current and former directors and employees that are Australian residents for taxation purposes.

Scheme of arrangement

34. On 4 September 2020, GetSwift Australia announced to the ASX its intention to seek to re-domicile to Canada, subject to Federal Court, shareholder, and regulatory approvals.

35. GetSwift Australia shareholders approved the re-domicile to Canada at the scheme meeting held on 9 November 2020.

36. The scheme to re-domicile was approved by the Federal Court on 17 December 2020.

37. The re-domicile of GetSwift Australia to Canada was undertaken by way of a Scheme of Arrangement between GetSwift Australia and its shareholders under Part 5.1 of the *Corporations Act 2001*.

38. To facilitate the re-domicile, GetSwift Canada was incorporated in Canada on 19 May 2020.

39. On the Implementation Date, each shareholder (other than ineligible foreign shareholders) who held GetSwift Australia shares on the Record Date received one GetSwift Canada share for every seven GetSwift Australia shares held on the Record Date, with fractional entitlements rounded down to ensure that each shareholder received a whole number of shares in GetSwift Canada, such that:

- shareholders of GetSwift Australia owned 100% of the GetSwift Canada shares in the same percentage as their existing holdings, and
- GetSwift Canada became the holder of all the issued shares in GetSwift Australia.

40. Shareholders did not receive any other consideration in relation to the scheme of arrangement.

41. On the Implementation Date, each GetSwift Australia option holder, including those that held their options as employee awards, had their options amended such that:

- they waived all and any rights under the terms of which their options were issued to accelerate or vest early and/or be paid any cash amount by GetSwift Australia in respect of the options they held on the Record Date
- they are entitled to receive one GetSwift Canada share for every seven GetSwift Australia options or employee awards exercised, with fractional entitlements rounded down to ensure that a holder receives a whole number of shares in GetSwift Canada, and
- the underlying exercise price of the options and employee awards was converted to Canadian dollars based on the Canadian/Australian exchange

rate published by the Reserve Bank of Australia on the business day before the Implementation Date.

42. Holders of GetSwift Australia options and employee awards did not receive any consideration in relation to the amendments made to their options and/or employee awards.

43. Employee awards continued to be held pursuant to GetSwift Australia's 2017 and 2019 Employee & Executive Ownership Plans.

44. GetSwift Australia delisted from the ASX and became a wholly-owned subsidiary of GetSwift Canada. GetSwift Canada shares were listed on the NEO Exchange in Toronto, Canada following implementation of the Scheme.

Other matters

45. Within two months after the completion time of the re-domicile of GetSwift Australia to Canada, GetSwift Canada made a choice under subsection 615-30(1).

Appendix – Explanation

ⓘ *This Explanation 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.*

Division 615 roll-over

46. Division 615 contains several conditions for eligibility to choose roll-over. The main conditions that are relevant to the exchange of GetSwift Australia shares for GetSwift Canada shares are:

- at least two entities must own all the shares or units in the 'original entity' (GetSwift Australia) (paragraphs 615-5(1)(a) and (b))
- there must be a scheme for reorganising the original entity's affairs, and consideration for the disposal of the shares or units in the original entity must consist only of receiving shares in another company (the interposed company) (GetSwift Canada) and nothing else (paragraph 615-5(1)(c))
- the interposed company must own all the shares or units in the original entity immediately after all the exchanging members have disposed of their shares or units in the original entity (the completion time) (section 615-15)
- immediately after the completion time, each exchanging member must own a whole number of shares in the interposed company (paragraph 615-20(1)(a))
- immediately after the completion time, each exchanging member must own a percentage of the shares in the interposed company that were issued to all the exchanging members of the original entity that is equal to the percentage of the shares or unit in the original entity that the exchanging member owned (paragraph 615-20(1)(b))
- immediately after the completion time, the exchanging members must own all the shares in the interposed company, or entities other than the exchanging members must own no more than five shares in the interposed company and the market value of those shares is such that it is reasonable to treat the exchanging members as owning all the shares (subsection 615-25(3))
- the shares issued in the interposed company must not be redeemable shares (subsection 615-25(1)), and
- the market value ratio tests in subsection 615-20(2) are satisfied.

47. Under the scheme, each GetSwift Australia shareholder received GetSwift Canada shares in exchange for all of their GetSwift Australia shares and nothing else. At the completion time of the scheme, GetSwift Canada owned all the shares in GetSwift Australia and each GetSwift Australia shareholder had the same percentage interest in and market value of shares in GetSwift Canada immediately after the completion time of the scheme as they had in GetSwift Australia before the scheme. All shareholders own a whole number of shares in GetSwift Canada immediately after the completion time.

48. All other relevant conditions under Division 615 are satisfied under the Scheme.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1997 124-15(2)
- ITAA 1997 124-15(3)
- ITAA 1997 Div 230
- ITAA 1997 Div 615
- ITAA 1997 615-5
- ITAA 1997 615-5(1)(a)
- ITAA 1997 615-5(1)(b)
- ITAA 1997 615-5(1)(c)
- ITAA 1997 615-10
- ITAA 1997 615-15
- ITAA 1997 615-20(1)(a)
- ITAA 1997 615-20(1)(b)
- ITAA 1997 615-20(2)
- ITAA 1997 615-25(1)
- ITAA 1997 615-25(3)
- ITAA 1997 615-30(1)
- ITAA 1997 615-40
- ITAA 1997 615-50(1)
- ITAA 1997 615-50(2)
- ITAA 1997 615-55(1)
- ITAA 1997 615-55(2)
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953 6(1)
- Corporations Act Pt 5.1
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-155(1)
- ITAA 1997 104-155(2)
- ITAA 1997 104-155(3)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Div 115
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 116-20(2)
- ITAA 1997 116-25

ATO references

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