


CR 2005/93A - Addendum - Income tax: dividend payment: StateWest Credit Society Limited

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Addendum

Class Ruling

Income tax: dividend payment: StateWest Credit Society Limited

This Addendum amends Class Ruling CR 2005/93 to allow for a slight variation to the arrangement. Instead of a share cancellation it will be a share transfer. This variation to the agreement does not alter the conclusions drawn in CR 2005/93.

CR 2005/93 is amended as follows:

1. Paragraph 4:

Omit the paragraph and substitute:

4. This Ruling deals with whether the payment to participating shareholders is a dividend. It does not deal with the capital gains tax consequences of the share transfer to Home. For example it does not deal with the consequences of CGT event A1 in section 104-10 of the ITAA 1997 happening on the share transfer to Home.

2. Paragraph 8:

Omit the paragraph and substitute:

8. This Class Ruling applies to the income year (as defined in section 995-1 of the ITAA 1997) in respect of which the dividend is paid to a participating shareholder. For participating shareholders that do not have a substituted accounting period, this will be either the income year ending 30 June 2006, or the income year ending 30 June 2007.

3. Paragraph 10:

Omit the paragraph and substitute:

10. This Class Ruling is withdrawn and ceases to have effect after 30 June 2007. However, the Ruling continues to apply after its withdrawal, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. This is subject to there being no change in the Arrangement or in the persons' involvement in the arrangement.

4. Paragraph 11:

Omit the paragraph and substitute:

11. The arrangement that is the subject of the Ruling is described below. The description is based on the following documents:

- the Application for Class Ruling from KPMG dated 1 September 2005;
- correspondence from KPMG dated 9 September 2005;
- correspondence from KPMG dated 16 September 2005;
- correspondence from KPMG dated 21 September 2005;
- correspondence from KPMG dated 18 January 2006; and
- correspondence from KPMG dated 2 February 2006.

These documents, or relevant parts of them, as the case may be, form part of and are to read with this description.

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

5. Paragraph 17:

Omit the paragraph and substitute:

17. Subsequent to the dividend payment, the shareholders of StateWest will participate in a scheme of arrangement under which their shares will be transferred to Home and shares in Home will be issued to them.

6. Paragraph 43:

Omit the paragraph and substitute:

47. A scheme for the disposition of membership interests is defined widely in paragraph 177EA(14)(a) of the ITAA 1936 and includes the issuing of a membership interest. Consequently, the issue of Home shares to the current StateWest shareholders in consideration for the transfer of their StateWest shares to Home would constitute a disposition of a membership interest in accordance with paragraph 177EA(14)(a) of the ITAA 1936.

7. Paragraph 46:

Omit paragraph 46(f) and substitute:

- (f) *Was any consideration paid or given by or on behalf of or received by or on behalf of the relevant taxpayer determined based on imputation benefits to be received by the relevant taxpayer?*

No part of the consideration paid by the shareholders of StateWest through the transfer of their shares in StateWest to Home, in return for the shares issued to them in Home, was determined on the basis of any imputation benefits likely to be received by them.

The relevant consideration was determined based upon an agreed valuation of StateWest, Home's share price and the number of StateWest shareholders.

Omit paragraph 46(j) and substitute:

- (j) *Any of the matters referred to in subparagraphs 177D(b)(i)-(viii) of the ITAA 1936*

The proposed arrangement is based upon a desire of StateWest and Home to provide the West Australian community with a strong, vibrant home-grown viable alternative to the big banks. It is expected that the merged organisation will have in excess of 110,000 customers and total customer funds under management of over \$3.5 billion.

The arrangement is to be implemented firstly through an amendment to the StateWest constitution to permit the payment of dividends to its members. This is to be followed by the payment of a special dividend of \$13.78 million thereby reducing its retained profits from \$69.79 million to \$56.01 million. Home will then issue 15.17 million Home shares to the current shareholders of StateWest in exchange for the transfer of their StateWest shares to Home.

As a result of the merger the financial position of the StateWest shareholders is not likely to be affected. Having received a fully franked dividend out of profits accrued during their membership, the StateWest shareholders are issued Home shares in exchange for their StateWest share. The number of shares issued to them is determined based upon an agreed valuation of StateWest, Home's share price and the number of StateWest shareholders.

8. Paragraph 47:

Omit the paragraph and substitute:

47. Section 177EA of the ITAA 1936 could also have application in the context of a scheme for the disposition of a membership interest where a frankable distribution has been paid prior to the relevant disposition. The transfer of the shares held by StateWest shareholders in StateWest to Home, in exchange for Home shares, will constitute a scheme for the disposition of a membership interest under paragraph 177EA(14)(b) of the ITAA 1936.

9. Paragraph 49:

Omit the third bullet point and substitute:

- In the absence of the scheme representing the transfer of the membership interests of the StateWest members to Home in return for the issue of Home shares, the relevant franking credits would have been retained by StateWest and utilised in franking future distributions to those StateWest members, provided its constitution is amended to permit the payment of dividends. In the absence of the amendment to the constitution the relevant profits would be retained by StateWest and the associated franking credits would accumulate in its franking account.

Omit the fourth bullet point and substitute:

- The consideration received by StateWest members for the transfer of their StateWest shares to Home was determined based upon an agreed valuation of StateWest, Home's share price and the number of StateWest shareholders. It was not in any way based upon the availability of imputation benefits.

This Addendum applies on and from 15 February 2006.

Commissioner of Taxation

15 February 2006

ATO references

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Income Tax ~~ Tax integrity measures ~~ dividend streaming and demerger benefits