


CR 2009/41 - Income tax: scrip for scrip: merger of MyState Financial Credit Union of Tasmania Limited and Tasmanian Perpetual Trustees Limited

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Class Ruling

Income tax: scrip for scrip: merger of MyState Financial Credit Union of Tasmania Limited and Tasmanian Perpetual Trustees 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 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;
- section 115-30 of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

All legislative references are to the ITAA 1997, unless otherwise specified.

Class of entities

3. The class of entities to which this Ruling applies consists of members of MyState Financial Credit Union of Tasmania Limited (MSF) who:

- (a) are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- (b) are not 'temporary residents' within the meaning of that expression in subsection 995-1(1);
- (c) participate in the MSF Scheme, as set out in the Merger Implementation Agreement and the MSF Information Booklet, whereby the MSF Members will dispose of their member shares in MSF (MSF Member Shares) in exchange for shares in MyState Limited (MyState Shares);
- (d) acquired their MSF Member Shares on or after 20 September 1985;
- (e) hold their MSF Member Shares on capital account; and
- (f) did not acquire their MSF Member Shares through an employee share scheme (as that term is defined in section 139C of the ITAA 1936).

Qualifications

4. The Commissioner makes this Ruling based on the proposed scheme precisely 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 37 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 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

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

- Class ruling application, dated 25 March 2009;
- Merger Implementation Agreement, dated 10 October 2008;
- Deed of Amendment: Merger Implementation Agreement, dated 21 January 2009;
- Second Deed of Amendment: Merger Implementation Agreement, dated 22 June 2009; and
- MSF Information Booklet, dated 29 June 2009.

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

10. MSF is a public company limited by shares, which is taken to be registered as a company under the *Corporations Act 2001*. It was established on 18 November 1959.

11. MSF is an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution operating predominantly in Tasmania.
12. MSF is a mutual credit union. It has approximately 117,000 members each of whom is the holder of one or more MSF Member Shares. The MSF Member Shares, whilst forming the capital of MSF, are held under the principles of mutuality adopted by MSF.
13. Although some eligible MSF members hold more than one MSF Member Share, they are treated on the same basis as MSF members holding one MSF Member Share. Under the principles of mutuality on which MSF is currently structured, as set out in its constitution, each MSF member is treated equally and has the same members' rights.
14. MSF has only MSF Member Shares on issue, and it does not have on issue any options over any of its MSF Member Shares or other interests.
15. On 10 October 2008, MSF and Tasmanian Perpetual Trustees Limited (TPX) (an Australian Securities Exchange (ASX) listed entity) entered into a Merger Implementation Agreement under which it was proposed that the two companies would merge to create a leading Tasmanian based integrated financial services group.
16. The terms of the Merger Implementation Agreement, were amended by the parties on 21 January 2009 and 22 June 2009.
17. Under the proposed merger transaction, MSF and TPX will become wholly owned subsidiaries of MyState Limited (MyState).
18. MyState was incorporated as a public company on 8 October 2008 with issued capital of two ordinary shares for \$2.
19. It is intended that MyState would become an APRA regulated non-operating holding company.
20. The proposed merger would be implemented by two schemes of arrangements, whereby:
 - (a) MSF members will transfer all their MSF Member Shares to MyState in return for MyState shares (MSF Scheme); and
 - (b) TPX shareholders will transfer all their TPX shares to MyState in return for MyState shares (TPX Scheme).
21. The MSF Scheme and TPX Scheme are interdependent and must be implemented on the same implementation date. The TPX Scheme will be implemented immediately prior to the MSF Scheme.
22. The MSF Scheme and TPX Scheme are subject to regulatory approvals from the Australian Securities and Investments Commission (ASIC), member/shareholder approvals and approval from the Supreme Court of Tasmania. In addition, the MSF Scheme is subject to APRA regulatory approval; and the TPX Scheme is subject to ASX regulatory approval.

23. As a result of the schemes MSF will be demutualised and TPX will be de-listed from the ASX.

24. The issued share capital of MyState, prior to the MSF Scheme and the TPX Scheme, will be 100 ordinary shares of \$1 with each non-executive director of MyState holding 10 ordinary shares. This is to provide the directors with a degree of control over MyState in a shareholder capacity prior to implementation of the MSF Scheme and the TPX Scheme.

25. Upon implementation:

- (a) MyState shares will be issued to TPX shareholders comprising 50 shares held by the directors of MyState nominated by TPX and a new issue of MyState shares; and
- (b) MyState shares will be issued to MSF members comprising 50 shares held by the directors of MyState nominated by MSF and a new issue of MyState shares.

26. Upon the implementation of the MSF Scheme and TPX Scheme, the ownership of MyState shares is expected to be:

- (a) 67.5% – held by MSF members; and
- (b) 32.5% – held by TPX shareholders.

27. Each eligible MSF member, who is registered as the holder of MSF Member Shares on the MSF Record Date, is to receive a MyState Share Parcel (being a pro-rata amount of the total MyState shares to be allotted to MSF members) in exchange for their MSF Member Shares.

28. MSF members will not receive any other consideration in exchange for their MSF Member Shares under the MSF Scheme.

29. All new MyState shares issued under the MSF Scheme will rank equally in all respects with all other MyState shares and will be issued free from any mortgage, lien, encumbrance or other security interest.

30. MSF members who have a registered address outside Australia or its external territories will have the MyState shares that they would otherwise be entitled to issued to a nominee who will sell them and remit the net proceeds of sale to the foreign MSF members.

31. Two meetings are to be held in respect of the MSF Scheme – the MSF Scheme Meeting and the MSF General Meeting. The MSF Scheme Meeting will be convened by the Supreme Court of Tasmania for the purpose of MSF members considering and voting on the MSF Scheme. The MSF General Meeting will be held to vote on amendments to the MSF Constitution that will enable the merger with TPX to reflect its change from a mutual entity, and the MSF Scheme to occur.

32. Each person who is registered on the MSF Share Register as a MSF member as at the Voting Entitlement Time is entitled to attend and vote at the MSF Scheme Meeting and the MSF General Meeting.

33. In general, each MSF member will have only one vote as the holder of MSF Member Shares. However, some exceptions will apply.

34. Each MSF member may choose to:

- (a) vote in favour of the resolutions to approve the MSF Scheme and the Transaction at the MSF Scheme Meeting and the MSF General Meeting (this being the course of action unanimously recommended by the MSF Directors);
- (b) vote against the resolutions to approve the MSF Scheme and the Transaction at the MSF Scheme Meeting and the MSF General Meeting (despite the unanimous recommendation of the MSF Directors);
- (c) request MSF to cancel their membership in MSF prior to the MSF Record Date (which would mean that they cannot participate in the MSF Scheme and the Transaction); or
- (d) do nothing; that is, neither vote in favour of or against the MSF Scheme and the Transaction. If the MSF Scheme is approved by the requisite majority, the MSF Scheme will be implemented, subject to court and regulatory approvals also being granted.

35. If:

- (a) the MSF Scheme is approved by the requisite majority at the MSF Scheme Meeting;
- (b) the resolution submitted at the MSF General Meeting is approved by the requisite majority and at least 5% of the MSF members give their written consent to the amendments of the MSF Constitution;
- (c) all necessary regulatory consents and approvals to the MSF Scheme by ASIC, APRA and the Treasurer are given; and
- (d) the MSF Scheme is approved by the Supreme Court of Tasmania,

it will bind all MSF members, including those who vote against it (or those who do not vote at all). In these circumstances, MSF Member Shares held at the MSF Record Date will be exchanged for MyState shares.

36. Where the MSF Scheme is implemented, MSF members may choose to retain their MyState shares or sell them for cash through a share sale facility.

37. If all the necessary approvals and conditions for the MSF Scheme are satisfied, it is expected that the MSF Scheme and the Transaction would be fully implemented by 15 September 2009.

Ruling

CGT event A1 happens on the disposal of MSF Member Shares

38. CGT event A1 happens when a MSF member exchanges their MSF Member Shares for MyState shares on the Implementation Date (subsections 104-10(1) and 104-10(2)).

39. The time when CGT event A1 happens is when the MSF Member Shares are exchanged for MyState shares under the scheme on the Implementation Date (paragraph 104-10(3)(b)).

Capital gain or capital loss

40. A MSF member will make a capital gain when CGT event A1 happens if the capital proceeds from the disposal of a MSF Member Share exceed its cost base. A MSF member will make a capital loss if those capital proceeds are less than the MSF Member Share's reduced cost base (subsection 104-10(4)).

Capital proceeds

41. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening will be the market value of the MyState shares received in exchange for each MSF Member Share (worked out at the time CGT event A1 happens).

If a capital gain is made

42. Subject to the qualification in paragraph 43 of this Ruling, a MSF member who makes a capital gain from the disposal of a MSF Member Share may choose scrip for scrip roll-over under Subdivision 124-M.

43. Scrip for scrip roll-over cannot be chosen if any capital gain the MSF member might make from the replacement MyState share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

44. If a MSF member chooses scrip for scrip roll-over, the capital gain made from the disposal of a MSF Member Share is disregarded (subsection 124-785(1)).

Cost base of MyState shares

45. The method for calculating the cost base and reduced cost base of each MyState share received in exchange for MSF Member Shares depends on whether the relevant MSF member chooses scrip for scrip roll-over.

Where scrip for scrip roll-over is chosen

46. Where scrip for scrip roll-over is chosen, the first element of the MSF member's cost base and reduced cost base of each MyState share is equal to the part of the cost base of the MSF Member Share exchanged for the relevant MyState share (subsections 124-785(2) and 124-785(4)).

Where scrip for scrip roll-over is not chosen

47. Where scrip for scrip roll-over is not chosen, the first element of the cost base and reduced cost base of each MyState share is equal to the market value of the part of the MSF Member Shares given in exchange for the MyState shares (subsections 110-25(2) and 110-55(2)).

Acquisition date of MyState shares

48. MSF members will acquire the MyState shares received in exchange for their MSF Member Shares on the date when a contract is entered into, or if there is no contract, when the MyState shares are issued to them (item 2 of the table in section 109-10).

49. The acquisition date will be the Implementation Date, which is when MyState issues the MyState shares to the MSF members in consideration for the transfer of their MSF Member Shares to MyState.

50. However, for the purposes of determining if a capital gain made on a subsequent disposal of a MyState share is eligible to be treated as a discount capital gain, MSF members who choose scrip for scrip roll-over are taken to have acquired their MyState shares when they acquired the corresponding MSF Member Share (item 2 of the table in subsection 115-30(1)).

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.*

51. 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.

52. The significant tax consequence 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.

53. 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 are exchanged for shares in another company;
- (b) the exchange is in consequence of a single arrangement;
- (c) conditions for the roll-over are satisfied;
- (d) further conditions, if applicable, are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

54. The MSF Scheme satisfies the requirements for scrip for scrip roll-over under Subdivision 124-M.

55. The Ruling section provides a detailed explanation of the Commissioner's decision. Therefore, no further explanation is warranted other than in one aspect of the conditions for scrip for scrip roll-over.

56. The relevant issue is that the membership interests of each MSF member are treated equally under the principles of mutuality on which MSF is currently structured. One consequence of this is that the MSF Scheme falls to be considered under paragraph 124-780(2)(c).

57. Paragraph 124-780(2)(c) requires that the relevant arrangement for Subdivision 124-M purposes must be 'one in which participation was available on substantially the same terms' for all of the owners of interests of a particular type in the original entity.

58. As each MSF member will receive the same MyState Share Parcel in exchange for their MSF Member Shares, this condition will be satisfied.

Appendix 2 – Detailed contents list

59. The following is a detailed contents list for this Ruling:

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References

- Previous draft:*
- ITAA 1997 104-10(3)(b)
- Not previously issued as a draft
- ITAA 1997 104-10(4)
 - ITAA 1997 109-10
- Related Rulings/Determinations:*
- ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
- TR 2006/10
- Subject references:*
- CGT asset
 - CGT event A1
 - CGT capital proceeds
 - CGT cost base
 - scrip for scrip roll-over
 - takeovers and mergers
- ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780(2)(c)
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 995-1(1)
- Legislative references:*
- ITAA 1936 6(1)
 - ITAA 1936 139C
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - Corporations Act 2001
 - TAA 1953
 - Copyright Act 1968
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ATO references

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