



CR 2010/14 - Income tax: Seven Group Holdings Limited - Issue of Transferable Extendable Listed Yield Shares 4

 This cover sheet is provided for information only. It does not form part of *CR 2010/14 - Income tax: Seven Group Holdings Limited - Issue of Transferable Extendable Listed Yield Shares 4*

 This document has changed over time. This is a consolidated version of the ruling which was published on *10 October 2018*



Class Ruling

Income tax: Seven Group Holdings Limited – Issue of Transferable Extendable Listed Yield Shares 4

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	28
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	39
Appendix 2:	
<i>Detailed contents list</i>	82

📌 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.

[Note: *This is a consolidated version of this document. Refer to the Legal Database (<https://www.ato.gov.au/law>) to check its currency and to view the details of all changes.]*

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:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- subsection 44(1) of the ITAA 1936;
- former Division 1A of Part IIIAA of the ITAA 1936;
- section 177EA of the ITAA 1936;
- Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 130-20 of the ITAA 1997;

- section 202-40 of the ITAA 1997;
- section 204-30 of the ITAA 1997;
- section 207-20 of the ITAA 1997; and
- section 207-155 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is the Australian resident holders of Transferable Extendable Listed Yield Shares 3 (TELYS3) as at the TELYS3 Scheme Record Date (6 May 2010) who will be issued on the Implementation Date (13 May 2010) Transferable Extendable Listed Yield Shares 4 (TELYS4) by Seven Group Holdings Limited (SGH) pursuant to the Scheme of Arrangement in accordance with Part 5.1 of the *Corporations Act 2001* (Corporations Act) between Seven Network Limited (SNL) and holders of TELYS3 (TELYS3 Scheme). In this Ruling, a person belonging to this class of entities is referred to as a Holder.

Paragraphs 37 to 38 and 71 to 81 of this Ruling only apply to those Holders who hold the TELYS4 on capital account.

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 27 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.

7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Copyright Law Branch
Attorney-General's Department
National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

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 provided, or relevant parts of them, form part of and are to be read with the description:

- class ruling application dated 19 February 2010;
- draft Terms of Issue of TELYS4 (the TELYS4 Terms);
- TELYS3 Prospectus dated 6 April 2005;
- draft Constitution of MergeCo Limited (now known as SGH);
- Scheme Booklet, comprising Parts A and B, dated 16 March 2010 for the scheme of arrangement between SNL and the holders of TELYS3 (TELYS3 holder(s)) in relation to the exchange of TELYS3 for TELYS4 (TELYS3 Scheme Booklet);
- correspondence from the applicant dated 25 February 2010 to 29 April 2010;
- TELYS4 Terms as amended and approved by the requisite majority of votes cast on the Resolution by TELYS4 Holders present and voting at the Meeting of 24 September 2018 either in person or by proxy (Amended TELYS4 Terms); and
- correspondence and explanatory material from SGH associated with the above Amended TELYS4 Terms.

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

Capitalised terms, as applicable, have the same meaning as in the TELYS3 Scheme Booklet.

Background

10. On 22 February 2010, SNL announced that agreement had been reached with Australian Capital Equity Pty Limited (ACE) on a proposal to combine the assets and investments of SNL with WesTrac Holdings Pty Limited (WesTrac Holdings) by merging the two groups under one holding company, SGH (merger).

11. The merger will involve:

- SGH, a recently incorporated company, acquiring all the ordinary shares in WesTrac Holdings from ACE in return for shares in SGH; and
- WesTrac Holdings acquiring all the ordinary shares in SNL and TELYS3.

12. WesTrac Holdings' acquisition of SNL will be implemented by way of two separate schemes:

1. a scheme of arrangement between SNL and holders of ordinary shares in SNL in accordance with Part 5.1 of the Corporations Act (Share Scheme); and
2. the TELYS3 Scheme.

Issue of TELYS4 under TELYS3 Scheme

13. Under the TELYS3 Scheme, WesTrac Holdings will acquire all TELYS3 from TELYS3 holders in exchange for TELYS4 in SGH to be issued by SGH. The TELYS4 to be issued by SGH will be contemporaneously listed on the Australian Securities Exchange with the SGH ordinary shares (SGH shares).

14. The TELYS3 Scheme is conditional on the Share Scheme proceeding. If the Share Scheme and TELYS3 Scheme are approved all TELYS3 holders will exchange each TELYS3 for a TELYS4 issued by SGH.

15. The issue of TELYS4 under the TELYS3 Scheme ensures that the SGH group, which will include SNL, will retain capital of approximately \$500 million previously raised by the issue of TELYS3 by SNL in 2005. Any surplus capital that has not already been utilised in the business of the SNL group will be used to expand the WesTrac business acquired by SGH and be invested strategically.

16. Subject to certain non-participating TELYS3 holders, all TELYS3 holders will be able to vote and participate in the TELYS3 Scheme on substantially the same terms.

Relevant features of the TELYS4

17. The TELYS4 are non-cumulative, redeemable and convertible preference shares in SGH which will rank junior to SGH creditors and senior only to SGH shares.

Dividends

18. A Holder of each TELYS4 is entitled to receive a preferred non-cumulative floating rate dividend payable in arrears on each Dividend Payment Date, being 31 May and 30 November, until the TELYS4 are Converted or Exchanged.

19. SGH may pay an optional dividend equal to the unpaid amount (if any) of the two immediately preceding dividends to which Holders are entitled under clause 2.1 of the TELYS4 Terms but which have been unpaid prior to the date of the payment of the optional dividend.

20. The payment of a dividend, including any optional dividend, is subject to:

- (a) the Directors, at their discretion, resolving to pay that dividend; and
- (b) there being funds legally available for the payment of dividends.

21. The applicant has advised that SGH intends to fully frank dividends and/or optional dividends payable in respect of the TELYS4. However, if any dividend is not franked or only partially franked, the dividend will be grossed up to the extent that the franking percentage of the dividend is less than or equal to 100%, as determined by the calculation in clause 2.3 of the TELYS4 Terms.

Conversion or Exchange

22. SGH may Convert or Exchange all or some of the TELYS4 by giving notice to the relevant Holders.

23. Conversion means the taking effect of the rights of a TELYS4 which are the same rights as the rights attaching to one fully paid SGH share upon the TELYS4 being Converted together with the allotment of additional SGH shares. Each TELYS4 upon Conversion will entitle the Holder to be allotted an additional number of SGH shares.

24. Furthermore, Conversion does not constitute cancellation, redemption or termination of a TELYS4 or an issue, allotment or creation of a new share (other than the additional SGH shares allotted as discussed in paragraph 23 of this Ruling).

25. A Holder of TELYS4 may, within 25 Business Days after becoming aware of the breach by the company of clause 2.10 of the TELYS4 Terms, request that SGH Convert all the TELYS4 held by the Holder and SGH must either Convert or Exchange all of the TELYS4 held by the Holder on the next Dividend Payment Date which is at least 25 Business Days after a valid request is received by SGH. SGH can elect in that circumstance whether to Convert or Exchange.

26. Exchange means SGH at its option redeeming, buying back or otherwise cancelling the TELYS4 for an amount equal to the sum of:

- its Face Value; and
- the unpaid amount (if any) of the two immediately preceding dividends to which Holders were entitled (adjusted in accordance with the formula in the TELYS4 Terms with necessary changes if this amount is not fully franked) but which were unpaid prior to the relevant Exchange Date.

26A. Pursuant to Clause 3.11 of the Amended TELYS4 Terms:

- on 27 September 2018 (the First Conversion Date) SGH Converted all the TELYS4 that were held by a Holder at 25 September 2018, 7pm (the First Conversion Record Date) which were not validly elected for sale on the ASX under the Partial Cash Exit Opportunity that was available under clause 3.11; and
- on 4 October 2018 (the Second Conversion Date) SGH Converted all remaining TELYS4 that were held by a Holder at 2 October 2018, 7pm (the Second Conversion Record Date).

26B. Conversion is defined at paragraph 23 of this Ruling. A Conversion of a TELYS4 under clause 3.11 results in the Holder now holding one SGH share plus an allotment of 3.60645 additional SGH shares for each TELYS4 so Converted and rank equally with all other fully paid SGH shares then on issue.

26C. Where the total number of additional SGH shares to be allotted to a Holder on Conversion of their TELYS4 under clause 3.11 includes a fraction, that fraction will be disregarded.

26D. As a result of the application of clause 3.11, there are no more TELYS4 on issue in SGH as they all became SGH shares pursuant to their Conversion and rank equally with all other fully paid SGH shares then on issue.

27. This Ruling is made on the basis that:

- the TELYS4 are characterised as 'equity interests' in SGH under Division 974;
- for the purposes of section 130-20 the issue of additional shares upon conversion are not taken to be a dividend under subsection 45(2) of the ITAA 1936 or 45C(1) of the ITAA 1936;
- for the purposes of section 202-40 none of the paragraphs in section 202-45 apply; and
- the dividends paid on TELYS4 will not be debited to the share capital account of SGH.

Ruling

Dividend

28. Each dividend and/or optional dividend paid in respect of each TELYS4 will be a dividend pursuant to subsection 6(1) of the ITAA 1936.

Frankable distribution

29. Each dividend and/or optional dividend will be a frankable distribution pursuant to subsection 202-40(1).

Inclusion of dividends in assessable income

30. Each dividend and/or optional dividend paid in respect of each TELYS4 will be included in the assessable income of a Holder pursuant to paragraph 44(1)(a)(i) of the ITAA 1936.

Franking credit and entitlement to a tax offset

31. A Holder will include the amount of the franking credit attached to the distribution in their assessable income pursuant to subsection 207-20(1).

32. As subsection 207-20(1) applies to include the franking credit attached to the dividend and/or optional dividend in the assessable income of a Holder, that Holder will be entitled to a tax offset under subsection 207-20(2) equal to the amount included in assessable income under subsection 207-20(1), subject to the Holder satisfying the 'qualified person' rules of Division 1A of former Part IIIAA of the ITAA 1936.

Holder a qualified person

33. Provided that the Holder holds each TELYS4 'at risk' for at least 90 days during the relevant qualification period the Holder will be capable of satisfying the definition of a 'qualified person'.

Anti-Avoidance provisions – imputation benefits

34. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefits received in respect of the payment of a dividend and/or optional dividend on each TELYS4.

35. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received in respect of the payment of a dividend and/or optional dividend on each TELYS4.

36. Section 207-155 will not have application as the dividend and/or optional dividend on each TELYS4 will not be paid in connection with a scheme which is in the nature of dividend stripping.

Conversion of a TELYS4 into a SGH share – CGT event

37. The conversion of a TELYS4 into a SGH share and the entitlement to allotment of an additional number of SGH shares will not give rise to a CGT event for a Holder pursuant to Division 104.

Cost base of the SGH shares

38. A Holder is to apportion the first element of their cost base and reduced cost base for the TELYS4 in a reasonable way over both the converted TELYS4 and the additional SGH shares in accordance with section 130-20.

Commissioner of Taxation

12 May 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.*

Dividend

39. Pursuant to subsection 6(1) of the ITAA 1936, the definition of 'dividend' means any amount paid or distributed to shareholders that, amongst other things, is not debited to the share capital account of the company making the payment or distribution.

40. SGH will not debit the amount of a dividend and/or optional dividend on TELYS4 to the share capital account of SGH. Accordingly, a dividend and/or optional dividend payable under each TELYS4 will be a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

Frankable distribution

41. Subsection 202-40(1) provides that a distribution is a frankable distribution to the extent that it is not unfrankable under section 202-45.

42. A distribution for a company (SGH) is a dividend or something that is taken to be a dividend under the ITAA 1936 and ITAA 1997 (Item 1 of the table in section 960-120).

43. There is no paragraph within section 202-45 which will apply with the result that a dividend of the type to be paid on TELYS4 is an unfrankable dividend pursuant to that section.

44. Each dividend and/or optional dividend will not be an unfrankable distribution and, therefore, each will be a frankable distribution pursuant to subsection 202-40(1).

Inclusion of dividends in assessable income

45. Subparagraph 44(1)(a)(i) of the ITAA 1936 provides that the assessable income of a resident shareholder includes dividends paid by a resident company out of the profits derived by that company from any source.

46. As a dividend and/or optional dividend will be paid by SGH out of profits derived by it, the requirements of paragraph 44(1)(a)(i) of the ITAA 1936 are satisfied.

47. Therefore, each Holder will include in their assessable income, pursuant to paragraph 44(1)(a)(i) of the ITAA 1936, each dividend and/or optional dividend paid in respect of each TELYS4.

Franking credit and entitlement to a tax offset

48. Subsection 207-20(1) provides that the assessable income of an entity that receives a franked distribution for the year of income in which the distribution is made includes the amount of the franking credit on the distribution. As SGH intends to fully frank the dividend and/or optional dividend payable on TELYS4, a Holder will include the amount of the franking credit attached to the distribution in their assessable income pursuant to subsection 207-20(1).

49. Subsection 207-20(2) provides that an entity that includes the amount of the franking credit on a franked distribution in its assessable income is entitled to a tax offset for the income year in which the distribution is made equal to the amount of the franking credit on the distribution.

50. As subsection 207-20(1) applies to include the franking credit attached to the dividend and/or optional dividend in the assessable income of a Holder, that Holder will be entitled to a tax offset under subsection 207-20(2) equal to the amount included in assessable income under subsection 207-20(1).

Holder a qualified person

51. A Holder will be capable of being a 'qualified person' in relation to a dividend and/or optional dividend made in respect of each TELYS4 provided that either:

- the Holder acquires their TELYS4 at least 90 days before the day on which the dividend and/or optional dividend is made; or
- the Holder disposes of a TELYS4 at least 90 days after the day on which the dividend and/or optional dividend was made.

52. Therefore, provided that the Holder holds each TELYS4 for at least 90 days during the relevant qualification period, then assuming the other requirements in former Division 1A of Part IIIAA of the ITAA 1936 are satisfied, the Holder will be capable of satisfying the definition of a 'qualified person'.

Anti-Avoidance provisions – imputation benefits

Section 177EA

53. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of the scheme is to obtain an imputation benefit. In these circumstances, subsection 177EA(5) of the ITAA 1936 enables the Commissioner to make a determination with the effect of either:

- imposing franking debits or exempting debits on the distributing entity's franking account; or

- denying the imputation benefit on the distribution that flowed directly or indirectly to the relevant taxpayer.

54. Pursuant to subsection 177EA(3) of the ITAA 1936, the provision applies if the following conditions are satisfied:

- (a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and
- (b) either:
 - (i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or
 - (ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and
- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and
- (d) except for this section, the person (the **relevant taxpayer**) would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and
- (e) 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 the relevant taxpayer to obtain an imputation benefit.

55. It is considered that the conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied because:

- (a) the issue of TELYS4 will constitute a scheme for the disposition of a membership interest (paragraph 177EA(3)(a) of the ITAA 1936).

Pursuant to paragraph 177EA(14)(a) of the ITAA 1936, a 'scheme for the disposition of membership interests or an interest in membership interests' includes a scheme that involves the issuing of membership interests.

The issuance of TELYS4 on the terms set out in the TELYS3 Scheme and the TELYS4 Terms involves the issuing of membership interests because once a TELYS4 is issued, the Holders become members in SGH as the TELYS4 are not debt interests (sections 960-130 and 960-135).

- (b) frankable distributions are expected to be payable to the Holders (paragraph 177EA(3)(b) of the ITAA 1936). The Commissioner accepts that dividends and/or optional dividends to be paid in respect of each TELYS4 will be frankable distributions to the extent that the dividends do not fall within the list in section 202-45 of the ITAA 1997.
- (c) franked distributions are expected to be paid to the Holders (paragraph 177EA(3)(c) of the ITAA 1936). SGH has advised that it is expected that distributions will be paid on each Dividend Payment Date and that those distributions will be fully franked to the extent franking credits are available in its franking account.
- (d) it is reasonable to expect that an imputation benefit will be received by the relevant taxpayers (the Holders) as a result of distributions made to Holders, given that SGH expects to frank the dividends and/or optional dividends on each TELYS4 (paragraph 177EA(3)(d) of the ITAA 1936).

56. Accordingly, the issue is whether having regard to the relevant circumstances of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme, did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

57. Circumstances which are relevant in determining whether any person has the requisite purpose include, but are not limited to, the factors listed in subsection 177EA(17) of the ITAA 1936. The relevant circumstances listed encompass a range of circumstances which taken individually or collectively could indicate the requisite purpose. Due to the diverse nature of these circumstances, some may or may not be present at any one time in any one scheme.

58. The exchange of each TELYS3 for a TELYS4 issued by SGH pursuant to the TELYS3 Scheme forms part of the merger of the WesTrac Holdings and SNL groups and ensures that the SGH group, including SNL, will retain share capital of approximately \$500 million. To the extent that the capital has not already been utilised by the SNL group, the surplus capital will be used to expand the WesTrac business and be invested strategically by SGH.

59. A consideration of the TELYS3 Scheme and the TELYS4 Terms does not lead to a conclusion that the scheme was entered into for a purpose (which is not merely an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit under the scheme.

60. Based on the information provided, and having regard to the factors listed in subsection 177EA(17) of the ITAA 1936, the qualifications set out in this Ruling and the relevant circumstances of the scheme, it would not be reasonable to conclude, for the purposes of paragraph 177EA(3)(e) of the ITAA 1936, that in entering into the scheme, SGH and/or the Holders demonstrate the objective purpose of securing imputation benefits for the Holders. To the extent that any imputation benefits are secured, those benefits are considered to be incidental to the more significant objective purpose of ensuring existing capital in SNL is retained by the SGH group of which SNL will be a subsidiary member following the merger.

61. Accordingly, the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 in respect of the payment of a dividend and/or optional dividend on each TELYS4.

Section 204-30

62. Subdivision 204-D relates to the Commissioner's power to make a determination in circumstances where distributions with attached imputation benefits are streamed to members of a corporate tax entity. An 'imputation benefit' is defined in subsection 204-30(6) to include, amongst other things, a member's entitlement to a tax offset granted under Division 207 or a franking credit arising in the franking account of the respective member, as a result of the distribution.

63. Streaming is not defined for the purposes of Subdivision 204-D. However, it is understood to refer to a company selectively directing the flow of franked distributions to those members who can most benefit from the imputation credits: refer to paragraph 3.28 of the Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002. A frankable distribution is a necessary prerequisite for the operation of section 204-30.

64. Section 204-30 applies in respect of a company which streams distributions and the giving of other benefits in such a way that some shareholders receive imputation benefits (the favoured members), and other shareholders receive lesser or no imputation benefits (the disadvantaged members) regardless of whether or not they receive other benefits.

65. If section 204-30 is found to have application, then the Commissioner may make a determination under paragraph 204-30(3)(c) that no imputation benefit is to arise in respect of the distributions made to those favoured members.

66. The issue of the TELYS4 by SGH does not involve the streaming of imputation benefits as between shareholders. This is because all equity holders in SGH after the issue of the TELYS4 will receive fully franked distributions.

67. Therefore, as all the equity holders in SGH will receive fully franked dividends subsequent to the issue of the TELYS4, subject to sufficient franking credits being available, there will not be any 'streaming' of imputation benefits and section 204-30 will not apply.

68. Accordingly the Commissioner will not make a determination under paragraph 204-30(3)(c) in respect of the payment of a dividend and/or optional dividend on each TELYS4.

Dividend stripping

69. Section 207-155 provides that a distribution is taken to be made as part of a dividend stripping operation if, and only if, the making of the distribution arose out of, or was made in the course of, a scheme that:

- (a) was by way of, or in the nature of, dividend stripping; or
- (b) had substantially the effect of a scheme by way of, or in the nature of, dividend stripping.

70. The TELYS3 Scheme and the TELYS4 Terms provide no indication that the offering of TELYS4 and the associated payment of franked dividends and/or optional dividends to the Holders in any way constitute a dividend stripping arrangement. As such, section 207-155 will not have application.

Conversion of a TELYS4 into a SGH share – CGT event

71. Upon Conversion of the TELYS4, the rights attached to TELYS4 which equate to the rights attached to one SGH share will take effect and all other rights under TELYS4 will no longer apply. Further, upon Conversion, each TELYS4 will entitle the holder to be allotted an additional number of SGH shares.

72. Shares are comprised of a bundle of rights; however, those rights are not separate pieces of property capable of being divided out and held separately. Accordingly, the rights attaching to shares do not constitute individual assets as defined by section 108-5, but rather combine to make up the relevant CGT asset, being the share (Taxation Ruling TR 94/30).

73. Under section 104-25, CGT event C2 happens if, among other things, the ownership of an intangible asset, such as a preference share, ends by the share:

- being redeemed or cancelled (paragraph 104-25(1)(a)); or
- if the share is a convertible interest – being converted (paragraph 104-25(1)(f)).

74. The mere variation of rights attaching to TELYS4 and allotment of an additional number of SGH shares is not a 'redemption' or 'cancellation' of the share under paragraph 104-25(1)(a). Further, the Conversion of TELYS4 does not involve TELYS4 being converted into equity interests under paragraph 104-25(1)(f), but rather 'Conversion' as defined according to the TELYS4 Terms.

75. Although CGT event C2 does not happen because of the variation of the rights attaching to TELYS4, the receipt of money or other consideration in respect of such a variation may attract the operation of CGT event H2 (paragraphs 10 and 46 to 48 of TR 94/30).

76. The Conversion of TELYS4 involving the allotment of additional number of SGH shares will result in an adjustment to the cost base and reduced cost base of TELYS4 under subsection 130-20(3). Accordingly, CGT event H2 does not happen on the Conversion of TELYS4 involving the allotment of additional number of SGH shares.

77. It follows from the above that no CGT event happens as a result of the Conversion.

Cost base of the SGH shares

78. Section 130-20 sets out what happens if you own shares in a company (the original equities) and the company issues other shares (the bonus equities) in relation to the original equities.

79. Upon Conversion of TELYS4 into SGH shares, additional SGH shares will be issued. Those shares are issued to Holders pursuant to their ownership of TELYS4, being shares. Therefore, section 130-20 will apply.

80. The issue of bonus shares will not be a dividend because the share issue will be debited to the share capital account of SGH for accounting purposes (paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936).

81. Pursuant to Item 1 of the table in subsection 130-20(3), a Holder will be taken to have acquired the additional SGH shares when they acquired the original TELYS4 and the Holder is to apportion the first element of their cost base and reduced cost base for the TELYS4 in a reasonable way over both the converted TELYS4 and the additional SGH shares.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Background	10
Issue of TELYS4 under TELYS3 Scheme	13
Relevant features of the TELYS4	17
<i>Dividends</i>	18
<i>Conversion or Exchange</i>	22
Ruling	28
Dividend	28
Frankable distribution	29
Inclusion of dividends in assessable income	30
Franking credit and entitlement to a tax offset	31
Holder a qualified person	33
Anti-Avoidance provisions – imputation benefits	34
Conversion of a TELYS4 into a SGH share – CGT event	37
Cost base of the SGH shares	38
Appendix 1 – Explanation	39
Dividend	39
Frankable distribution	41
Inclusion of dividends in assessable income	45
Franking credit and entitlement to a tax offset	48
Holder a qualified person	51
Anti-Avoidance provisions – imputation benefits	53
<i>Section 177EA</i>	53
<i>Section 204-30</i>	62
<i>Dividend stripping</i>	69
Conversion of a TELYS4 into a SGH share – CGT event	71
Cost base of the SGH shares	78
Appendix 2 – Detailed contents list	82

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 94/30; TR 2006/10

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 45(2)
- ITAA 1936 45C(1)
- ITAA 1936 Pt IIIAA Div 1A
- ITAA 1936 177EA
- ITAA 1936 177EA(3)
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(14)(a)
- ITAA 1936 177EA(17)
- ITAA 1997
- ITAA 1997 Div 104
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(a)
- ITAA 1997 104-25(1)(f)
- ITAA 1997 108-5
- ITAA 1997 130-20
- ITAA 1997 130-20(3)
- ITAA 1997 202-40
- ITAA 1997 202-40(1)
- ITAA 1997 202-45
- ITAA 1997 Subdiv 204-D
- ITAA 1997 204-30
- ITAA 1997 204-30(3)(c)
- ITAA 1997 204-30(6)
- ITAA 1997 Div 207
- ITAA 1997 207-20
- ITAA 1997 207-20(1)
- ITAA 1997 207-20(2)
- ITAA 1997 207-155
- ITAA 1997 960-120
- ITAA 1997 960-130
- ITAA 1997 960-135
- ITAA 1997 Div 974
- TAA 1953
- Copyright Act 1968
- Corporations Act 2001
- Corporations Act 2001 Pt 5.1

Other references:

- Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002

ATO references

NO: 1-1W6KDC9

ISSN: 1445-2014

BSL: PGI

ATOLaw topic: Income tax ~ Capital gains tax ~ CGT events C1 to C3 – end of a CGT asset
 Income tax ~ Capital gains tax ~ CGT events H1 and H2 – special capital receipts
 Income tax ~ Capital gains tax ~ cost base and reduced cost base
 Income tax ~ Capital gains tax ~ Other