

CR 2011/42 - Income tax: scrip for scrip rollover: exchange of shares and options in Sensear Pty Ltd for shares and options in Sensear Holdings Pty Ltd

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *11 April 2011*



Class Ruling

Income tax: scrip for scrip rollover: exchange of shares and options in Sensear Pty Ltd for shares and options in Sensear Holdings Pty Ltd

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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 dealt with in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the 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 in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is the shareholders and option holders (interest holders) of Sensear Pty Ltd (Sensear) who:

- (a) hold their Sensear interests on capital account;
- (b) are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at the time of exchange; and
- (c) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Sensear interests.

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

Qualifications

4. 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 8 to 13 of this Ruling.

5. 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

7. This Ruling applies from 1 July 2010 to 30 June 2011. The Ruling continues to apply after 30 June 2011 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

8. 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 22 September 2010;
- Revised Class Ruling Application dated 10 November 2010;
- Correspondence from the Applicant dated 24 January 2011 and 9 February 2011;
- Sensear Holdings Pty Ltd draft constitution;
- Constitution of Sensear Pty Ltd; and
- Draft Restructure Offer to shareholders.

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

9. Sensear is a private company that was incorporated in Australia on 23 March 2006. Under the scheme, a newly incorporated Australian private company, Sensear Holdings Pty Ltd (Holdings), is being interposed between Sensear and its interest holders.

10. On 6 August 2010 Sensear had:

- 40,482,935 ordinary shares on issue;
- 195,000 options in Sensear on issue (of which the majority were employee shares acquired under an employee share scheme);
- 50 shareholders; and
- two shareholders owning shareholdings greater than 10%, with one being a significant stakeholder (as defined in subsection 124-783(6)) by owning a shareholding greater than 30%.

11. Under the scheme:
- (a) The shareholders transfer their Sensear shares to Holdings in exchange for replacement shares in Holdings (Holdings shares) on a 1:1 basis;
 - (b) The option holders:
 - have their Sensear options cancelled; and
 - receive newly issued options in Holdings (Holdings options) on a 1:1 basis;
 - (c) The transfer of shares and the replacement of options take place under contracts (share contracts and option replacement contracts) which are formed when the Sensear interest holders accept the offers that are made to them under the scheme; and
 - (d) All contracts are subject to a condition that all Sensear interest holders accept the offers that are made to them under the scheme.
12. When the scheme is completed, Holdings will own 100% of the voting shares in Sensear and the original Sensear interest holders will have replacement interests in Holdings that correspond with their former Sensear interests.
13. Sensear does not have a common stakeholder (as defined in subsection 124-783(3)) and all entities are dealing at arm's length.

Ruling

Exchange of Sensear shares – CGT event A1

14. CGT event A1 happens when a shareholder disposes of their Sensear share under the scheme described in this Ruling (subsection 104-10(1)). The time of the event is when the shareholder enters into the share contract under which the share is exchanged for a Holdings share (paragraph 104-10(3)(a)).
15. A shareholder makes a capital gain when CGT event A1 happens if the capital proceeds for the Sensear share exceed its cost base (subsection 104-10(4)).
16. A shareholder makes a capital loss when CGT event A1 happens if the capital proceeds for the Sensear share are less than its reduced cost base (subsection 104-10(4)).

Cancellation of Sensear options – CGT event C2

17. CGT event C2 happens when an option holder's option is cancelled under the scheme described in this Ruling (subsection 104-25(1)). The time of the event is when the option holder enters into the option replacement contract under which the option is replaced with a Holdings option (paragraph 104-25(2)(a)).

18. An option holder makes a capital gain when CGT event C2 happens if the capital proceeds from the cancellation of the Sensear option exceed its cost base (subsection 104-25(3)).

19. An option holder makes a capital loss when CGT event C2 happens if the capital proceeds from the cancellation of the Sensear option are less than its reduced cost base (subsection 104-25(3)).

Capital proceeds

20. The capital proceeds from each CGT event are the market value of the replacement interest worked out at the time of the event (paragraph 116-20(1)(b)).

Cost base and reduced cost base of replacement interests

21. The first element of the cost base and the reduced cost base of the Holdings share is the market value of the Sensear share that was exchanged for it. The market value is worked out as at the time the Holdings share is acquired (paragraph 110-25(2)(b) and subsection 110-55(2)).

22. The first element of the cost base and the reduced cost base of the Holdings option is the market value of the Sensear option that was replaced by it. The market value is worked out as at the time the Holdings option is acquired (paragraph 110-25(2)(b) and subsection 110-55(2)).

Availability of scrip for scrip roll-over

23. Subject to paragraphs 24 and 25 of this ruling, a Sensear interest holder who makes a capital gain from the disposal of Sensear shares or the cancellation of Sensear options is eligible to choose scrip for scrip roll-over (roll-over) (section 124-780 and subsection 124-785(1)).

24. Roll-over cannot be chosen if any capital gain that a Sensear interest holder might make from the replacement interests would be disregarded otherwise than because of a roll over (paragraph 124-795(2)(a)).

25. A significant stakeholder in Sensear, in order to obtain roll-over, must elect with Holdings to obtain the roll-over (paragraph 124-780(3)(d)) and the disclosure conditions in paragraph 124-780(3)(e) must be complied with.

Consequences of choosing scrip for scrip roll-over

26. If roll-over is chosen, the capital gain is disregarded (subsection 124-785(1)).

27. The first element of the cost base and the reduced cost base of each Holdings share will be the cost base and the reduced cost base of the Sensear share for which roll-over is chosen (subsections 124-785(2) and 124-785(4)).

28. The first element of the cost base and the reduced cost base of each Holdings option will be the cost base and the reduced cost base of the Sensear option for which roll-over is chosen (subsections 124-785(2) and (4)).

Discount capital gain

29. If a Sensear interest holder makes a capital gain and roll-over is not chosen, or cannot be chosen, they may be eligible to treat the gain as a discount capital gain provided that the requirements of Division 115 are satisfied.

Acquisition date of replacement interests

30. If roll-over is not chosen or is not available:

- (a) the acquisition date of a replacement Holdings share is the date the shareholder entered into the share contract (section 109-10, item 2); and
- (b) the acquisition date of a replacement Holdings option is the date the shareholder entered into the option replacement contract (section 109-10, item 2).

If roll-over is chosen, for the purpose of determining if a capital gain made on any later disposal of a replacement interest is a discount capital gain, the acquisition date of that interest is the date the original corresponding Sensear interest was acquired (subsection 115-30(1), item 2).

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.*

31. The tax consequences arising from and the relevant legislative provisions concerning the scheme are outlined in the Ruling part of this document.

32. The significant tax consequence is the availability of scrip for scrip roll-over under Subdivision 124-M. Scrip for scrip roll-over enables interest holders to disregard a capital gain in circumstances where their interests are replaced by corresponding interests. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

33. Subdivision 124-M contains a number of conditions for, and exceptions to, an interest holder being eligible to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the scheme are:

- (a) shares and options in a company are exchanged for shares and options 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.

34. Under the scheme, the conditions for roll-over are satisfied and the Ruling section explains the Commissioner's decision.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 110-25
- Not previously issued as a draft
- ITAA 1997 110-25(2)(b)
 - ITAA 1997 110-55
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 110-55(2)
 - ITAA 1997 Div 115
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
- Subject references:*
- capital gains tax
 - CGT roll-over relief
 - scrip for scrip roll-over
- ITAA 1997 116-20(1)(b)
 - ITAA 1997 Div 122
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(3)(d)
 - ITAA 1997 124-780(3)(e)
 - ITAA 1997 124-783(3)
 - ITAA 1997 124-783(6)
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - TAA 1953
 - Copyright Act 1968
- Legislative references:*
- ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(3)(a)
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-25(1)
 - ITAA 1997 104-25(2)(a)
 - ITAA 1997 104-25(3)
 - ITAA 1997 109-10
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ATO references

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