


***CR 2011/78 - Income tax: scrip for scrip: exchange of shares in Shadforth Financial Group Holdings Limited for shares in Snowball Group Limited***

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## Class Ruling

### Income tax: scrip for scrip: exchange of shares in Shadforth Financial Group Holdings Limited for shares in Snowball Group Limited

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#### **❶ 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 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 112-30 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 indicated.

## Class of entities

3. The class of entities to which this Ruling applies are the shareholders of Shadforth Financial Group Holdings Limited (Shadforth) who:

- (a) acquired their Shadforth shares after 19 September 1985;
- (b) held their Shadforth shares on capital account;
- (c) either accepted the offer made by Snowball Group Limited (Snowball) to acquire their Shadforth shares or had their Shadforth shares compulsorily acquired by Snowball;
- (d) were residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* at the time of the merger transaction; and
- (e) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Shadforth shares.

(Note - Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

## 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 15 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

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8. This Ruling applies from 1 July 2010 to 30 June 2012. The Ruling continues to apply after 30 June 2012 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

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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 24 May 2011;
- copy of Investor Presentation to the Australian Securities Exchange (ASX) dated 26 May 2011;
- Bid Implementation Deed dated 26 May 2011; and
- Snowball Group Limited ASX Release of 14 July 2011.

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

## Overview

10. As at 1 May 2011, Shadforth was an unlisted public company with 239,870,173 ordinary shares on issue. Shadforth provided financial advisory and wealth management services.

11. As at 20 May 2011, Snowball was a public company, listed on the ASX, with 202,249,534 shares on issue. Snowball also provided financial advisory and wealth management services.

## **The Merger Transaction**

12. On 26 May 2011, Snowball made an offer to Shadforth shareholders (the Snowball Offer) to acquire their Shadforth shares in return for Snowball shares in the ratio of 2.15 Snowball shares for every 1 Shadforth share. The Snowball Offer did not involve a cash component.

13. For Shadforth shareholders who accepted the Snowball Offer, a conditional contract (the Disposal Contract) for the sale of their Shadforth shares was formed. The time of the contract was the date when they accepted the Snowball Offer. The Disposal Contract was conditional on a minimum 90% acceptance of the Snowball Offer by Shadforth shareholders.

14. The 90% acceptance threshold was reached on 27 June 2011 and acceptances had risen to 99.72% by 8 July 2011. Snowball is prepared to compulsorily acquire outstanding Shadforth shares.

## **Other matters**

15. There were no 'significant stakeholders' or 'common stakeholders' in relation to the Scheme within the meaning of those expressions in section 124-783. All entities were dealing at arm's length.

# **Ruling**

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## **Capital gains tax**

### ***CGT event A1***

16. CGT event A1 happened when a Shadforth shareholder disposed of each Shadforth share to Snowball (subsections 104-10(1) and 104-10(2)).

17. Where a Shadforth shareholder accepted the Snowball Offer, CGT event A1 happened at the time when the Shadforth shareholder entered into the Disposal Contract (paragraph 104-10(3)(a)).

18. Where a Shadforth shareholder had their Shadforth shares compulsorily acquired by Snowball, CGT event A1 happened when Snowball became the owner of their Shadforth shares (subsection 104-10(6)).

***Capital gain or capital loss***

19. A Shadforth shareholder made a capital gain if the capital proceeds from the disposal of their Shadforth share exceeded its cost base. The capital gain was the amount of the excess (subsection 104-10(4)).

20. A Shadforth shareholder made a capital loss if the capital proceeds from the disposal of their Shadforth share was less than its reduced cost base. The capital loss was the amount of the difference (subsection 104-10(4)).

***Capital proceeds***

21. The capital proceeds for the disposal of each Shadforth share were the market value, at the time when CGT event A1 happened, of the Snowball shares that were referable to the disposal of the Shadforth share (paragraph 116-20(1)(b)).

***Availability of scrip for scrip roll-over if a capital gain is made***

22. Subject to the qualification in paragraph 24 of this Ruling, a Shadforth shareholder who made a capital gain from the disposal of their Shadforth share is eligible to choose scrip for scrip roll-over (section 124-780). Scrip for scrip roll-over is not available for a capital loss.

23. If scrip for scrip roll-over is chosen, the capital gain the Shadforth shareholder made on the disposal of their Shadforth share is disregarded (subsection 124-785(1)).

24. Scrip for scrip roll-over cannot be chosen if the capital gain made by a Shadforth shareholder from the disposal of their Shadforth share to Snowball would be disregarded for a reason other than the application of a roll-over (paragraph 124-795(2)(a)).

***Discount capital gain***

25. If a participating Shadforth shareholder made a capital gain and scrip for scrip roll-over is not chosen or cannot be chosen, they may be eligible to treat the gain as a discount capital gain provided that they satisfy the requirements of Division 115.

***Acquisition date of Snowball shares***

26. Shadforth shareholders acquired their Snowball shares:

- if they accepted the Snowball Offer to dispose of their Shadforth shares, on the date when they entered into the Disposal Contract (item 2 in the table in section 109-10); or

- if their Shadforth shares were compulsorily acquired, on the date when the Snowball shares were issued to them (item 2 in the table in section 109-10).

27. For the purposes of applying the CGT discount to any later disposal of their Snowball shares, Shadforth shareholders who choose scrip for scrip roll-over are taken to have acquired their Snowball shares when they acquired the corresponding Shadforth shares (item 2 in the table in subsection 115-30(1)).

### ***Cost base of Snowball shares***

28. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each replacement Snowball share is worked out by reasonably attributing to it a proportion of the cost base and reduced cost base respectively of the corresponding Shadforth share (subsections 124-785(2) and 124-785(4)).

29. Where scrip for scrip roll-over is not chosen or cannot be chosen, the first element of the cost base and reduced cost base of each replacement Snowball share is worked out by reasonably attributing to it a proportion of the market value of the corresponding Shadforth share (paragraph 110-25(2)(b) and subsections 110-55(2) and 112-30(1)).

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**Commissioner of Taxation**

10 August 2011

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## 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.*

### Capital gains tax

30. The Ruling section details the tax consequences and the relevant legislative provisions that relate to this Scheme.

31. The significant tax consequence is the availability of scrip for scrip roll-over under Subdivision 124-M. Scrip for scrip roll-over enables a shareholder to disregard a capital gain from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in the exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

32. 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 conditions that are relevant to this Scheme are:

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

33. Under the Scheme, the conditions for roll-over under Subdivision 124-M have been satisfied.

34. The Commissioner accepts that the market value of each Snowball share acquired by a Shadforth shareholder may be determined by reference to the volume weighted average price (VWAP) of Snowball shares traded on the ASX on the date of acquisition.

## **Appendix 2 – Detailed contents list**

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

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 2006/10

### *Subject references:*

- capital gains tax
- CGT roll-over relief
- scrip for scrip roll-over

### *Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1997
  - ITAA 1997 104-10
  - ITAA 1997 104-10(1)
  - ITAA 1997 104-10(2)
  - ITAA 1997 104-10(3)(a)
  - ITAA 1997 104-10(4)
  - ITAA 1997 104-10(5)(a)
  - ITAA 1997 104-10(6)
  - ITAA 1997 109-10
  - ITAA 1997 110-25(2)(b)
  - ITAA 1997 110-55
  - ITAA 1997 110-55(2)
  - ITAA 1997 112-30
  - ITAA 1997 112-30(1)
  - ITAA 1997 Div 115
  - ITAA 1997 115-30(1)
  - ITAA 1997 116-20
  - ITAA 1997 116-20(1)(b)
  - ITAA 1997 Subdiv 124-M
  - ITAA 1997 124-780
  - ITAA 1997 124-783
  - 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
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### ATO references

NO: 1-31SZFB6

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT event A1 – disposal of a CGT asset  
Income Tax ~~ Capital Gains Tax ~~ roll-overs – scrip for scrip