


CR 2016/66 - Income tax: CGT rollover - exchange of shares in Ecosave Holdings Limited for shares in Ecosave Holdings Inc.

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Class Ruling

Income tax: CGT rollover – exchange of shares in Ecosave Holdings Limited for shares in Ecosave Holdings Inc.

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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 considered in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 115-30 of the ITAA 1997
- section 124-10 of the ITAA 1997, and
- Division 615 of the ITAA 1997.

All 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 ordinary shareholders in Ecosave Holdings Limited (EHL) who:

- participated in the exchange of their shares in EHL (the EHL shares) for equivalent shares in Ecosave Holdings Inc. (EHI) (the EHI shares)
- held their EHL shares neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, broadly they were held on capital account
- are ‘residents of Australia’ as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at the time of disposal of their EHL shares, and
- are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their EHL shares.

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

4. In this Ruling, this class of entities is referred to as ‘participating shareholders’.

Qualifications

5. The Commissioner makes this Ruling based on the precise arrangements identified in this Ruling.

6. 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 25 of this Ruling.

7. 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.

Date of effect

8. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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 and statements made by the applicant. The Commissioner has relied on that information and statements in making this Ruling. Information supplied included:

- the class ruling application, and
- the Scheme Booklet to shareholders.

Background

10. EHL is a company limited by shares incorporated in Australia in 2002 and a resident of Australia for income tax purposes.

11. All of the shares in EHL are ordinary shares and were acquired by their respective holders on or after 20 September 1985.

12. EHL is the head company of an income tax consolidated group.

13. EHL provides energy efficiency solutions to businesses and governments in Australia and USA through members of the EHL Group which include subsidiaries in the USA.

14. EHL was admitted to the official list of the Australian Securities Exchange (ASX) on 15 January 2013. A resolution of EHL shareholders was passed on 31 July 2015 approving EHL's removal from the official list of the ASX. EHL de-listed from the ASX as of the close of trading on 15 September 2015 and EHL shares ceased to trade on the ASX from that time.

15. EHL started to focus on operations in the US and made a determination to have an increasing focus on its US operations going forward, including restructuring the Group to have a US incorporated holding company over the EHL Group.

The restructure

16. On 21 August 2015, EHL announced to the ASX, its intention to proceed with a re-organisation of EHL's corporate structure, subject to Federal Court, shareholder and regulatory approvals.

17. The re-organisation broadly included the following steps:

- the incorporation of a new holding company, Ecosave Holdings Inc. (EHI), in Delaware, United States, and

- the exchange by EHL's existing shareholders, of their EHL shares for equivalent shares in EHI on a one-for-one basis, and nothing else.

18. The restructure was undertaken by way of a court approved scheme of arrangement (the scheme of arrangement) under section 411 of the *Corporations Act 2001* (Cth).

19. EHI was incorporated on 14 August 2015 with EHL holding one redeemable share in EHI that was redeemed upon the EHL shareholders exchanging their EHL shares for EHI shares.

20. Under the restructure, each participating shareholder received a whole number of shares in EHI equal to the number of shares they held in EHL, and nothing else.

21. There was no provision for the shares issued by EHI to the participating shareholders to be bought back and cancelled and are therefore not redeemable shares.

22. EHL shareholders will have the same proportionate ownership and value immediately before and after the restructure.

23. After the share exchange, EHI became the sole shareholder and holding company of EHL.

24. Implementation of the scheme and the exchange of shares happened on 14 December 2015.

Other matters

25. Pursuant to subsection 615-30(1), as subsection 615-30(2) does not apply to EHI, EHI has chosen within 2 months after implementation that section 615-65 applies.

Ruling

Disposal of EHL shares – CGT event A1

26. CGT event A1 happened as a result of the disposal by participating shareholders of their shares in EHL to EHI (section 104-10) in exchange for shares in EHI. The time of CGT event A1 was when the EHL shares were transferred to EHI on the implementation date of 14 December 2015 (paragraph 104-10(3)(b)).

Application of Division 615 rollover

27. A participating shareholder is eligible to choose roll-over under Division 615.

28. A participating shareholder who chooses roll-over under Division 615 will disregard any capital gain or capital loss made from the disposal of EHL shares for EHI shares (section 615-40 with section 124-10).

29. For participating shareholders who choose roll-over under Division 615, the first element of the cost base and reduced cost base of each new EHL share they have acquired under the scheme will equal the cost base of the corresponding EHL share that was transferred (worked out as at the time of transfer) (section 615-40 with subsection 124-10(3)).

30. For the purposes of determining any discount capital gains under Division 115 on a future disposal of their EHL shares acquired under the scheme, a participating shareholder who chooses roll-over will be taken to have acquired those EHL shares on the same date they had acquired their corresponding EHL shares (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation

28 September 2016

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.*

Rollover under Division 615

31. Roll-over under Division 615 enables a member of a company or a trust to disregard a capital gain or capital loss from a share or a unit that is either disposed of, or redeemed or cancelled, as part of a reorganisation of the affairs of the entity, where the member becomes the owner of new shares in another company in exchange.

32. Division 615 contains a number of conditions for eligibility to choose roll-over. The main conditions that are relevant to the EHL shareholders exchanging their EHL shares for EHI shares on a one-for-one basis are:

- at least two entities must own all the shares or units in EHL (called the 'original entity') (paragraph 615-5(1)(b))
- there must be a scheme for reorganising the original entity's affairs, and consideration for the disposal of the shares or units in the original entity must consist only of receiving shares in another company, EHI, (called the 'interposed company') and nothing else (paragraph 615-5(1)(c))
- the interposed company must own all the shares or units in the original entity immediately after all the exchanging members have disposed of their shares or units in the original entity (called the 'completion time') (section 615-15)
- immediately after the completion time, each exchanging member must own a whole number of shares in the interposed company (paragraph 615-20(1)(a))
- immediately after the completion time, each exchanging member must own a percentage of the shares in the interposed company that were issued to all the exchanging members of the original entity that is equal to the percentage of the shares or units in the original entity that the exchanging member owned (paragraph 615-20(1)(b))
- immediately after the completion time, the exchanging members must own all the shares in the interposed company, or entities other than those members must own no more than 5 shares in the interposed company and the market value of those shares is such that it is

reasonable to treat the exchanging members as owning all the shares (subsection 615-25(3))

- the shares issued in the interposed company must not be redeemable shares (subsection 615-25(1)), and
- the market value ratio test in subsection 615-20(2) is met.

33. Under the restructure, the participating shareholders received ordinary shares in EHI in exchange for all of their shares in EHL on a one-for-one basis and nothing else. Following the restructure, EHI owns all the shares in EHL, and the participating shareholders have the same percentage interest and value in EHI immediately after as they had in EHL immediately before. All shareholders own a whole number of shares in EHI. All other relevant conditions under Division 615 are also satisfied by the scheme.

34. Accordingly, for the participating shareholders who choose roll-over under Division 615, the capital gains tax consequences are set out in paragraphs 26 to 30 of this Ruling.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 115-30
 - ITAA 1997 115-30(1)
 - ITAA 1997 124-10
 - ITAA 1997 124-10(3)
 - ITAA 1997 Div 615
 - ITAA 1997 615-5(1)(b)
 - ITAA 1997 615-5(1)(c)
 - ITAA 1997 615-15
 - ITAA 1997 615-20(1)(a)
 - ITAA 1997 615-20(1)(b)
 - ITAA 1997 615-20(2)
 - ITAA 1997 615-25(1)
 - ITAA 1997 615-25(3)
 - ITAA 1997 615-30(1)
 - ITAA 1997 615-30(2)
 - ITAA 1997 615-40
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001 411
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ATO references

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