


CR 2022/86 - Slack Technologies, Inc - employee share scheme - exchange of rights and shares for rights and shares in salesforce.com, inc

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Status: **legally binding**

Class Ruling

Slack Technologies, Inc – employee share scheme – exchange of rights and shares for rights and shares in salesforce.com, inc

📌 Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for Australian employees of Slack Technologies, Inc (Slack) who held rights and shares in Slack that were exchanged for rights and shares in salesforce.com, inc (Salesforce) under the scheme outlined in this Ruling.
2. Details of this scheme are set out in paragraphs 30 to 50 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* throughout the period to which the scheme relates
 - were employed by Slack immediately before the merger of Slack and Salesforce, and by Salesforce (or its wholly-owned subsidiary) immediately after the merger

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- held immediately before the merger
 - Class A shares in Slack (Slack shares) on capital account (not as a revenue asset defined in section 977-50 or as trading stock as defined in subsection 995-1(1)), and/or
 - unvested Slack restricted stock units (RSUs) and/or unvested Slack options (together, Slack rights) acquired under a Slack employee share scheme, which had not been subject to a deferred taxing point, and
- did not hold a beneficial interest in more than 10% of the shares, or rights to shares, and were not in a position to cast or control more than 10% of the maximum number of votes that may be cast at a general meeting of Slack or Salesforce immediately after the acquisition of the respective interests.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 30 to 50 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

Unvested Slack Technologies, Inc rights

7. Your unvested Slack options are ESS interests under section 83A-10.
8. Your unvested Slack RSUs, where they are ultimately settled with shares (instead of cash), will be treated as always being ESS interests under section 83A-10 (section 83A-340).
9. These Slack rights were granted under a deferral scheme for the purposes of section 83A-105.
10. An ESS deferred taxing point did not arise upon the cancellation of your unvested Slack rights due to the operation of section 83A-130.
11. In accordance with section 83A-130:
- the merger of Slack and Salesforce in accordance with the Merger Agreement entered into between them on 1 December 2020 is a takeover (subsection 83A-130(1))
 - the Salesforce rights issued in exchange for your Slack rights in accordance with the Merger Agreement are reasonably regarded as ‘matching’ (paragraph 83A-130(2)(b))
 - you are entitled to treat the Salesforce rights that you acquired because of the merger as a continuation of your Slack rights (subsection 83A-130(2)), and

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- your employment in Salesforce (or one of its subsidiaries) is treated as a continuation of your employment in respect of which the Slack rights were acquired (subsection 83A-130(6))

12. As the replacement of your Slack rights with Salesforce rights is not a deferred taxing point, you are not required to include any amount in your assessable income under as a result of the replacement (section 83A-130).

13. Additionally, while CGT event C2 happened when your Slack rights were cancelled (subsection 104-25(1)), you can disregard any capital gain (or capital loss) arising from CGT event C2 (subsection 130-80(1)).

Capital gains tax consequences for your Slack Technologies, Inc shares

CGT event A1 happened on the disposal of your Slack Technologies, Inc shares

14. CGT event A1 happened when you disposed of each of your Slack shares to Salesforce because of the merger (section 104-10).

15. The time of the CGT event is the date the Merger Agreement closed (21 July 2021) (paragraph 104-10(3)(b)).

16. Your capital proceeds from CGT event A1 happening are:

- cash consideration received of US\$26.79 per Slack Share (paragraph 116-20(1)(a)), and
- scrip consideration received, being the market value of the replacement 0.0776 shares of Salesforce common stock you received in respect of the disposal of each of your Slack shares (paragraph 116-20(1)(b)). The market value of the Salesforce shares is worked out as at the time of CGT event A1 happening.

17. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Slack Share exceeded the cost base of that share (subsection 104-10(4)). The capital gain is the amount of the excess.

18. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Slack Share were less than the reduced cost base of that share (subsection 104-10(4)). The capital loss is the difference.

Availability of partial scrip for scrip roll-over if a capital gain is made for your Slack Technologies, Inc shares

19. Subject to the qualifications in paragraph 20 of this Ruling, if you made a capital gain from the disposal of your Slack shares, you may choose partial scrip for scrip roll-over under subsection 124-790(1) for that part of the capital gain that is referable to the receipt of the replacement Salesforce shares component of the consideration (sections 124-780 and 124-790).

20. Scrip for scrip roll-over cannot be chosen if any capital gain you make from the replacement Salesforce shares would be disregarded, except because of a roll-over (subsection 124-795(2)).

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Consequences if you choose partial scrip for scrip roll-over***Capital gain partially disregarded***

21. If you choose partial scrip for scrip roll-over, the capital gain you made from the disposal of your Slack Share is disregarded to the extent that you received replacement Salesforce shares (eligible proceeds) (subsection 124-785(1)).

22. The capital gain made from the disposal of a Slack Share is not disregarded to the extent that you received cash (ineligible proceeds) (subsection 124-790(1)).

Cost base and reduced cost base of replacement salesforce.com, inc share

23. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Salesforce share received is calculated by reasonably attributing to it the cost base and reduced cost base (respectively) of your original Slack Share for which it was exchanged and for which the roll-over was obtained (subsection 124-785(2) and (4)). Any part of the cost base of the Slack Share exchanged by you that relates to the receipt of cash consideration is not included (subsection 124-785(3)).

Acquisition date of a replacement salesforce.com, inc share

24. For the purposes of determining whether a capital gain made from any later disposal of a Salesforce share is a discount capital gain, if you choose scrip for scrip roll-over, you are taken to have acquired your Salesforce share when you acquired your original Slack shares that were exchanged for the relevant Salesforce share (table item 2 of subsection 115-30(1)).

Consequences if you do not, or cannot, choose partial scrip for scrip roll-over***Capital gain or capital loss is not disregarded***

25. If you do not, or cannot, choose scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your Slack shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

26. If you made a capital gain and scrip for scrip roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met.

Cost base and reduced cost base of replacement salesforce.com, inc share

27. If partial 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 Salesforce share that you received is equal to that part of the market value of the Slack shares you gave in respect of acquiring the Salesforce share (paragraph 110-25(2)(b) and subsections 110-55(2) and 112-30(1)). The market value of a Slack Share given by you that is attributable to the receipt of cash consideration is not included in the cost base or reduced cost base of a new Salesforce share (subsection 112-30(1)).

28. The market value of the Slack shares you gave is to be worked out as at the time when you acquired the Salesforce share.

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Acquisition date of replacement salesforce.com, inc shares

29. If scrip for scrip roll-over is not chosen or cannot be chosen, you are deemed to have acquired the Salesforce shares when those shares were issued to you on 21 July 2021, being the closing date of the merge (table item 2 of section 109-10).

Scheme

30. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Overview

31. Slack was a software company founded in 2009 and based in the United States of America (US).

32. Salesforce is a US-based software company founded in 1999.

33. On 1 December 2020, Slack and Salesforce entered into a Merger Agreement to merge Slack into Salesforce.

34. Just before the merger, Australian-resident employees of Slack held interests in Slack:

- Unvested Slack options provided under the Slack 2009 Stock Plan
- Unvested Slack RSUs provided under the Slack 2019 Stock Option and Incentive Plan (2019 Stock Plan), and
- Slack shares

35. All unvested Slack options and unvested Slack RSUs were acquired by employees on or after 19 December 2015.

Unvested Slack Technologies, Inc options

36. Unvested Slack options entitle the holder to purchase a Slack share for an exercise price equal to the market value of the Slack share at the grant date.

37. Unvested Slack option conditions include:

- expiration 10 years from the grant date
- a vesting condition requiring continuing service
- vesting is over 4 years
 - 25% vests after one year
 - 75% vests monthly over the remaining 3 years
- being non-transferrable.

Unvested Slack Technologies, Inc restricted stock units

38. Unvested Slack RSUs entitle the holder to receive one Slack Share.

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39. Terms and conditions were set out in the RSU Agreement at the grant date and include:

- a vesting condition requiring continuing service; the RSUs vest over 4 years, as follows
 - 25% vests after one year
 - 6.25% vests quarterly over the remaining 3 years
- that as soon as practicable, and no later than 15 March of the year following the year in which vesting occurs, RSUs are settled in cash or shares per the RSU Agreement
- that RSUs cannot be encumbered or disposed of until:
 - the RSUs have vested, and
 - shares have issued.

Slack Technologies, Inc shares

40. Slack shares entitled the holder to one vote per share and were registered for trading on the New York Stock Exchange. Some Australian employees held Slack shares at the time of the Merger.

41. No Australian-resident employees:

- were able to cast or control more than 10% of the maximum number of votes that might be cast at a general meeting of Slack, or
- held a beneficial interest in more than 10% of the shares in Slack.

The merger agreement

Structure

42. On 1 December 2020, the following entities entered into an arrangement (the Merger Agreement):

- Slack
- Salesforce
- Skyline Strategies I Inc (Skyline I), a 100% subsidiary of Salesforce
- Skyline Strategies II LLC (Skyline II), a 100% subsidiary of Salesforce.

43. Under the Merger Agreement:

- Skyline I would merge into Slack, with Slack surviving (the First Merger), and
- immediately following the First Merger, Slack would merge into either Salesforce or Skyline II, with either Salesforce or Skyline II surviving (the Second Merger).

44. The Merger Agreement closed on 21 July 2021 with completion of the merger of Slack with and into Skyline II, which then became Slack Technologies, LLC, a wholly-owned subsidiary of Salesforce.

Status: **legally binding**

Treatment of Slack Technologies, Inc rights

45. At the effective time of the Merger, all outstanding and unvested Slack options and unvested Slack RSUs held by employees were automatically converted into options and RSUs respectively to purchase shares in common stock of Salesforce (unvested Salesforce options and unvested Salesforce RSUs).

46. The number of unvested Salesforce options and unvested Salesforce RSUs was determined by multiplying the number of shares covered by the respective Slack right by the conversion ratio of 0.1885 (rounded down to the nearest whole share).

47. The exercise price for the unvested Salesforce options was the exercise price of the unvested Slack option divided by the option conversion ratio of 0.1885 (rounded up to the nearest whole cent).

48. The unvested Salesforce options and unvested Salesforce RSUs otherwise retained the same terms and conditions as their respective Slack rights, including the vesting terms.

Treatment of Slack Technologies, Inc shares

49. In settlement of the purchase price paid for outstanding Slack shares, holders received per share:

- US\$26.79, and
- 0.0776 shares of Salesforce common stock (any fractional share of Salesforce common stock was paid out in cash at US\$260.50 per share).

50. The settlement outlined in paragraph 49 of this Ruling occurred upon closing of the merger on 21 July 2021.

Commissioner of Taxation

21 September 2022

Status: **not legally binding**

Appendix – Explanation

❶ *This Explanation 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.*

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Holders of Slack Technologies, Inc rights that qualified for tax deferral under Subdivision 83A-C immediately after the merge

51. No ESS deferred taxing point occurred upon the cancellation of the Slack rights pursuant to restructure roll-over relief under section 83A-130 as:

- Slack rights that qualified as ESS interests could reasonably be regarded as having been replaced by Salesforce rights that qualified as ESS interests as a result of a takeover (subparagraph 83A-130(1)(a)(ii))
- just before the restructure, you held your ESS interest in the form of an unvested Slack Right that you acquired under an employee share scheme (paragraph 83A-130(1)(b))
- your employment with Salesforce or a subsidiary of Salesforce is regarded as a continuation of your employment with Slack or one of its subsidiaries (subsection 83A-130(6)), and
- at the time of acquiring the Slack rights (and taking into account the rights you will acquire on exercise of these rights), you did not hold a beneficial interest in more than 10% of the shares in Slack and did not control more than 10% of the maximum number of voting rights that may be cast at a Slack general meeting (subsections 83A-130(9) and (10)).

52. Any capital gain or capital loss you made on the Slack rights being cancelled was disregarded because:

- the CGT event happened in relation to the Slack right acquired under an employee share scheme (paragraph 130-80(1)(a))
- the CGT event was not CGT event E4, G1 or K8 (paragraph 130-80(1)(b))
- the CGT event happened on the date the Merger Agreement closed and a deferred taxing point under Subdivision 83A-C had not been reached (subparagraph 130-80(1)(d)(ii), and
- subsection 130-80(2) (pertaining to loss or forfeiture of your ESS interests) did not apply.

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Availability of partial scrip for scrip roll-over under Subdivision 124-M if a capital gain is made

53. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base of the replacement share.

54. 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:

- an entity exchanges shares in a company for shares in another company (paragraph 124-780(1)(a))
- the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- conditions for the roll-over in subsection 124-780(3) are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

55. A shareholder can only obtain a partial roll-over if the capital proceeds for their share include something (ineligible proceeds) other than a replacement share (ineligible part) (subsection 124-790(1)). The Scheme that is the subject of this Ruling satisfies the requirements for partial roll-over under Subdivision 124-M.

Consequences if you choose partial scrip for scrip roll-over

Capital gain partially disregarded

56. If you choose partial scrip for scrip roll-over, the capital gain you made from the disposal of a Slack Share is disregarded to the extent you received replacement Salesforce shares (eligible proceeds) (subsection 124-785(1)). The capital gain is not disregarded to the extent that you received cash consideration for the disposal of your Slack Share (ineligible proceeds).

57. Subsection 124-790(2) provides that the cost base of the ineligible proceeds is that part of the cost base of the original interest as is reasonably attributable to the ineligible proceeds. The cost base of each Slack Share is, for the purposes of working out the cost base of the replacement Salesforce shares, reduced by that part of the cost base which is reasonably attributable to the cash consideration of US\$26.79.

58. The method to be used by a Slack shareholder to calculate that part of the cost base of each Slack Share that is not reasonably attributable to the cash consideration of US\$26.79 (eligible proceeds cost base) is:

Eligible proceeds cost base =

$$\text{Cost base of Class share} \times (\text{Market value of Salesforce share} \div (\text{Market value of Salesforce share} + \text{US\$26.79}))$$

59. The method to be used by a Slack shareholder to calculate that part of the cost base of each Slack Share that is reasonably attributable to the cash consideration of US\$26.79 (ineligible proceeds cost base) is:

Ineligible proceeds cost base =

$$\text{Cost base of Class share} \times (\text{US\$26.79} \div (\text{Market value of Salesforce share} + \text{US\$26.79}))$$

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60. In working out the amount of the capital gain that is subject to scrip for scrip roll-over, the following method may be applied:

$$\text{Capital gain (roll-over)} = \text{Eligible proceeds} - \text{Eligible proceeds cost base}$$

61. In working out the amount of the capital gain that is not subject to scrip for scrip roll-over, the following method may be applied:

$$\text{Capital gain} = \text{Ineligible proceeds} - \text{Ineligible proceeds cost base}$$

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-10
- ITAA 1997 83A-105
- ITAA 1997 83A-130
- ITAA 1997 83A-130(1)
- ITAA 1997 83A-130(1)(a)(ii)
- ITAA 1997 83A-130(1)(b)
- ITAA 1997 83A-130(2)
- ITAA 1997 83A-130(2)(b)
- ITAA 1997 83A-130(6)
- ITAA 1997 83A-130(9)
- ITAA 1997 83A-130(10)
- ITAA 1997 83A-340
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-25(1)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)(b)
- ITAA 1997 110-55(2)
- ITAA 1997 112-30(1)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(a)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(1)(a)
- ITAA 1997 124-780(2)
- ITAA 1997 124-780(2A)
- ITAA 1997 124-780(3)
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(3)
- ITAA 1997 124-785(4)
- ITAA 1997 124-790
- ITAA 1997 124-790(1)
- ITAA 1997 124-790(2)
- ITAA 1997 124-795(2)
- ITAA 1997 130-80(1)
- ITAA 1997 130-80(1)(a)
- ITAA 1997 130-80(1)(b)
- ITAA 1997 130-80(1)(d)(ii)
- ITAA 1997 130-80(2)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)

ATO references

NO: 1-SECTIU2
 ISSN: 2205-5517
 BSL: IAI
 ATOLaw topic: Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip - Subdivision
 124-M
 Income tax ~~ Capital gains tax ~~ Employee share schemes

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