

CR 2025/25 - Auswide Bank Ltd - scheme of arrangement



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Status: **legally binding**

Class Ruling

Auswide Bank Ltd – scheme of arrangement

① Relying on this Ruling

This publication 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 shareholders of Auswide Bank Ltd (Auswide) who disposed of their ordinary shares in Auswide (Auswide Shares) to MyState Bank Limited (MyState Bank) on 19 February 2025 (Implementation Date) by way of a scheme of arrangement.
2. Details of this scheme are set out in paragraphs 27 to 50 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.
4. Certain terms in this Ruling have been capitalised to maintain alignment with the Scheme Booklet dated 23 October 2024 and the Scheme of Arrangement included at Annexure C to the Scheme Booklet.

Who this Ruling applies to

5. This Ruling applies to you if you:
 - were a holder of Auswide Shares (Auswide Shareholder) registered on Auswide's share register as at 12 February 2025 (Record Date)
 - acquired your Auswide Shares on or after 20 September 1985
 - held your Auswide Shares on capital account for Australian income tax purposes – that is, you did not hold your Auswide Shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
 - disposed of your Auswide Shares on the Implementation Date under the scheme outlined in paragraphs 27 to 50 of this Ruling.

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6. This Ruling does not apply to you if you:
- are a 'temporary resident' as defined in subsection 995-1(1)
 - are exempt from Australian income tax
 - acquired your Auswide Shares under an employee share, option or rights plan that is an employee share scheme for the purposes of Division 83A and your ESS deferred taxing point occurred on the Implementation Date
 - were subject to the investment manager regime in Subdivision 842-I in relation to your Auswide Shares, or
 - were subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 27 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

7. This Ruling applies from 1 July 2024 to 30 June 2025.

Ruling

CGT event A1 happened on the disposal of your Auswide Bank Ltd shares

8. CGT event A1 happened when you disposed of your Auswide Shares to MyState Bank (subsection 104-10(1)).
9. The time of CGT event A1 was on the Implementation Date (paragraph 104-10(3)(b)).

Capital proceeds

10. If you were an Auswide Shareholder (other than an Ineligible Foreign Shareholder), the capital proceeds received from CGT event A1 happening in relation to each Auswide Share you disposed of is the market value of the corresponding shares in MyState Limited (New MyState Shares) you received in exchange (paragraph 116-20(1)(b)). The market value of the New MyState Shares is worked out at the time of CGT event A1.

11. If you were an Ineligible Foreign Shareholder, the capital proceeds received from CGT event A1 happening in relation to your Auswide Shares is the amount of the cash payment you received under the Sale Facility, being \$4.59 for each Auswide Share you disposed of (paragraph 116-20(1)(a)).

Capital gain or capital loss

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

13. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Auswide Share were less than the reduced cost base of that share at

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the time of CGT event A1 (subsection 104-10(4)). The capital loss is the amount of the difference.

Foreign resident shareholders

14. You disregard a capital gain or capital loss made from CGT event A1 when you disposed of your Auswide Shares (section 855-10) if:

- you were a 'foreign resident' or the trustee of a 'foreign trust for CGT purposes' (as defined in subsection 995-1(1)) that held Auswide Shares just before the Implementation Date, and
- your Auswide Shares were not 'taxable Australian property' (as defined in section 855-15).

15. Your Auswide Shares were not taxable Australian property under table items 1, 2 or 4 of section 855-15. However, your Auswide Shares were taxable Australian property if they were:

- used by you at any time in carrying on a business through a permanent establishment in Australia in the circumstances specified in table item 3 of section 855-15, or
- a CGT asset that is covered by subsection 104-165(3) (about individuals choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

Availability of scrip for scrip roll-over

16. Subject to the qualifications in paragraphs 17 and 18 of this Ruling, if you received New MyState Shares in exchange for your Auswide Shares and you made a capital gain from the disposal of those Auswide Shares, you may choose to obtain scrip for scrip roll-over for that capital gain (sections 124-780 and 124-785). Scrip for scrip roll-over is not available if you made a capital loss (paragraph 124-780(3)(b)) or if you were an Ineligible Foreign Shareholder who received cash proceeds under the Sale Facility.

17. You cannot choose scrip for scrip roll-over if any capital gain you might make from the replacement New MyState Shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

18. If you were a foreign resident just before the Implementation Date and your Auswide Shares were 'taxable Australian property' (as defined in section 855-15), you cannot choose scrip for scrip roll-over unless the replacement New MyState Shares were also taxable Australian property just after the Implementation Date (subsection 124-795(1)).

Consequences if you choose scrip for scrip roll-over

Capital gain is disregarded on disposal of your Auswide Bank Ltd shares

19. If you choose scrip for scrip roll-over, you disregard the capital gain you made from CGT event A1 happening in respect of the disposal of your Auswide Shares (subsection 124-785(1)).

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Cost base and reduced cost base of MyState Limited shares

20. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement New MyState Share you received is worked out by reasonably attributing to it the cost base and reduced cost base of the Auswide Share for which it was exchanged and for which you obtained the roll-over (subsections 124-785(2) and (4)).

21. In this case, due to each Auswide Share being exchanged for 1.112 New MyState Shares, the cost base (and reduced cost base) of each Auswide Share you owned is divided by 1.112 to determine the first element of the cost base and reduced cost base for each replacement New MyState Share.

Acquisition date of corresponding MyState Limited shares

22. For the purposes of determining whether a capital gain made from any later disposal of your New MyState Shares is a 'discount capital gain', you are taken to have acquired your replacement New MyState Shares on the date you acquired, for CGT purposes, the corresponding Auswide Shares (table item 2 of subsection 115-30(1)).

Consequences if you do not choose scrip for scrip roll-over
Capital gain is not disregarded on disposal of your Auswide Bank Ltd shares

23. 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 Auswide 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).

24. If you made a capital gain from CGT event A1 happening where 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 following conditions in Subdivision 115-A are met:

- you are an individual, a complying superannuation entity or a trust (section 115-10)
- the capital gain was worked out using a cost base that was calculated without reference to indexation (subsection 115-20(1)), and
- you acquired your Auswide Shares at least 12 months before the Implementation Date (subsection 115-25(1)).

Cost base and reduced cost base of corresponding MyState Limited shares

25. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement New MyState Share you received is equal to the market value of the Auswide Share you gave in exchange for your New MyState Share (paragraph 110-25(2)(b) and subsection 110-55(2)).

26. The market value of the Auswide Share you gave is worked out as at the time you acquired the replacement New MyState Share, which was on the Implementation Date (paragraph 110-25(2)(b) and subsection 110-55(2)).

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Scheme

27. 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.

Auswide Bank Ltd

28. Auswide is an Australian-resident company incorporated on 10 September 1979.

29. Auswide was listed on the Australian Securities Exchange (ASX) on 19 September 1994.

30. Auswide is an authorised deposit-taking institution and licensed credit and financial services provider. Auswide's principal activity is to provide banking, credit and deposit services to personal and business customers across Australia, principally in Queensland, Sydney and Melbourne.

31. Auswide is the head company of an Australian income tax consolidated group.

32. As at the Record Date, Auswide had 51,800,677 ordinary shares on issue with 7,407 registered shareholders.

MyState Limited

33. MyState Limited (MyState) is an Australian-resident company that was incorporated on 8 October 2008 and listed on the ASX on 10 September 2009.

34. MyState is the non-operating holding company of a diversified financial services group, which provides banking, trustee and wealth management services to customers across Australia through its retail brands, including MyState Bank.

MyState Bank Limited

35. MyState Bank is an Australian-resident company and a wholly owned subsidiary of MyState.

36. MyState Bank is an authorised deposit-taking institution which offers home loan products, savings products and transactional banking solutions.

Acquisition of Auswide Bank Ltd by MyState Bank Limited

37. On 19 August 2024, Auswide, MyState and MyState Bank entered into a Scheme Implementation Agreement for MyState Bank to acquire 100% of the Auswide Shares by way of a scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Corporations Act).

38. On 3 February 2025, the scheme of arrangement was approved by the requisite majority of Auswide Shareholders at the Scheme Meeting.

39. On 7 February 2025, the Supreme Court of New South Wales approved the scheme of arrangement and provided orders pursuant to Part 5.1 of the Corporations Act.

40. On 10 February 2025, the scheme of arrangement became effective and Auswide was suspended from trading on the ASX.

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41. On the Implementation Date, all Auswide Shares were transferred to MyState Bank and Auswide Shareholders (other than the Ineligible Foreign Shareholders) received 1.112 New MyState Shares in exchange for each Auswide Share held on the Record Date, with any resulting fractional entitlement of:

- less than 0.5 of a New MyState Share being rounded down to the nearest whole number of New MyState Shares, and
- 0.5 or more of a New MyState Share being rounded up to the nearest whole number of New MyState Shares.

42. An Ineligible Foreign Shareholder means an Auswide Shareholder:

- who is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and its external territories, New Zealand, Singapore, Hong Kong, United Kingdom, the United Arab Emirates and the United States of America, or
- whose registered address shown in the Auswide Bank share register is a place outside those jurisdictions or who is acting on behalf of such a person,

unless MyState determined that:

- it was lawful and not unduly onerous or unduly impracticable to issue that Auswide Shareholder with New MyState Shares on implementation of the scheme of arrangement, and
- it was lawful for that Auswide Shareholder to participate in the scheme of arrangement by the law of the relevant place outside Australia and its external territories, New Zealand, Singapore, Hong Kong, United Kingdom, the United Arab Emirates and the United States of America.

43. On the Implementation Date, the New MyState Shares which an Ineligible Foreign Shareholder would otherwise have been entitled to receive in exchange for the disposal of their Auswide Shares were issued to the Sale Agent under the Sale Facility. The Sale Agent then sold the New MyState Shares in the ordinary course of trading on the ASX. On 5 March 2025, the net sale proceeds were paid to each Ineligible Foreign Shareholder on a pro rata basis, equating to \$4.59 per Auswide Share disposed of.

Other matters

44. There was no 'significant stakeholder' or 'common stakeholder' for the scheme of arrangement within the meaning of those terms in section 124-783.

45. Immediately before the Scheme Implementation Agreement was entered into and up until the Implementation Date, Auswide had more than 300 shareholders. Auswide was not treated as if it did not have at least 300 members under subsection 124-810(1).

46. Neither MyState nor any of its wholly owned subsidiaries issued equity (other than the New MyState Shares issued to Auswide Shareholders in exchange for their Auswide Shares), or owed new debt under the scheme of arrangement, to an entity that was not a member of the MyState group and in relation to the issuing of the New MyState Shares (paragraph 124-780(3)(f)).

47. Auswide Shareholders dealt with MyState and MyState Bank at arm's length in relation to the disposal and acquisition of the Auswide Shares (subsection 124-780(4)).

48. MyState did not make a choice to deny the scrip for scrip roll-over to Auswide Shareholders under Subdivision 124-M (subsection 124-795(4)).

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49. No foreign resident Auswide Shareholder, either alone or together with their 'associates' (as defined in section 318 of the *Income Tax Assessment Act 1936*), held 10% or more of the Auswide Shares on the Implementation Date or for any 12-month period during the 24 months prior to the Implementation Date (for the purposes of section 960-195 and paragraph 855-25(1)(a)).

50. On the Implementation Date, the sum of the market values of Auswide's assets that were 'taxable Australian real property' (as defined in section 855-20) did not exceed the sum of the market values of Auswide's assets that were not taxable Australian real property (for the purposes of section 855-30 and paragraph 855-25(1)(b)).

Commissioner of Taxation

2 April 2025

Status: **not legally binding**

References

Legislative references:

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NO: 1-13ZIH8C9
 ISSN: 2205-5517
 BSL: PG
 ATOlaw topic: Capital gains tax ~~ CGT events ~~ A1 - disposal of a CGT asset
 Capital gains tax ~~ Rollovers ~~ Scrip for scrip

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