



Class Ruling

Income tax: scrip for scrip: merger of The Rock Building Society Limited and MyState Limited

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	28
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	46
Appendix 2:	
<i>Detailed contents list</i>	62

ⓘ 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 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 177EA of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- section 112-30 of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 116-40 of the ITAA 1997;
- section 109-10 of the ITAA 1997;

- Subdivision 115-A of the ITAA 1997;
- Subdivision 115-C of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997; and
- section 204-30 of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997, unless otherwise specified.

Class of entities

3. The class of entities to which this Ruling applies are the shareholders of The Rock Building Society Limited (The Rock), who:

- disposed of their shares in The Rock to MyState Limited (MyState) in exchange for shares in MyState; and
- held their shares in The Rock on capital account at the time of disposal; and
- were residents of Australia as defined in subsection 6(1) of the ITAA 1936 at the time of disposal; and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their The Rock 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 27 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

8. This Ruling applies from 1 July 2011 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

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:

- application for Class ruling dated 10 October 2011;
- the Scheme Implementation Deed (SID) dated 30 August 2011;
- The Scheme Booklet for the scheme of arrangement between The Rock and the holders of shares in The Rock in relation to the proposed acquisition by MyState;
- 2011 Annual report of The Rock;
- 2011 Annual report of MyState;
- Australian Securities Exchange (ASX) announcements by The Rock dated 30 August 2011, 31 August 2011, 18 October 2011, 21 November 2011 and 28 November 2011; and
- correspondence from the applicant between 10 November 2011 and 30 November 2011 providing further information.

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

Relevant entities

The Rock

10. The Rock was incorporated on 2 June 1967 and, at the time of the scheme, was an Australian resident company that had been listed for quotation on the ASX since 10 December 1992.

11. The Rock was an Approved Deposit Taking Institution regulated by the Australian Prudential Regulation Authority. It provided retail financial services including home loans, cash management accounts and insurance.

12. As at 30 August 2011, The Rock had 25,161,601 fully paid ordinary shares on issue. The Rock did not have any other form of securities on issue.

MyState

13. MyState was incorporated on 8 October 2008. It is an Australian public company listed for quotation on the ASX. It offers a range of financial products and services. As at 31 August 2011, MyState had 67,439,158 fully paid ordinary shares on issue.

14. MyState is not a member of a wholly-owned group as defined in section 975-500.

Disposal of shares in The Rock

The Scheme of Arrangement

15. On 31 August 2011, The Rock announced that it had entered into a SID with MyState under which it was proposed that MyState would acquire all of the shares in The Rock by means of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* (the Scheme).

16. On 28 November 2011, a court ordered scheme meeting of The Rock shareholders was held and a resolution was passed by the requisite majority of shareholders in The Rock approving the proposed scheme of arrangement.

17. On 12 December 2011, the Scheme was implemented (the Implementation Date). As a result of the Scheme, The Rock became a wholly-owned subsidiary of MyState.

The Scheme consideration

18. In consideration for the transfer of their shares to MyState, those shareholders, other than ineligible overseas shareholders, who held shares in The Rock on the record date for the Scheme of 7pm (Sydney time) on 8 December 2011 (Record Date) received shares in MyState. These shareholders received 7.75 new ordinary MyState shares for every 10 ordinary shares in The Rock that they held on the Scheme Record Date.

19. Fractional entitlements to MyState shares were rounded up or down to the nearest whole number of new MyState shares. An entitlement to half a MyState share was rounded up.

Ineligible overseas shareholders

20. Shareholders in The Rock with a registered address in any other jurisdiction other than Australia, including its external territories, or New Zealand were not eligible to receive new MyState shares that would otherwise form part of the Scheme consideration. Instead, the new MyState shares that would otherwise have been issued to these ineligible overseas shareholders were issued to a nominee who sold the new MyState shares on the ASX and returned the net proceeds of this sale to the ineligible overseas shareholders.

2011 Final Dividend

21. The Board of The Rock declared, on 30 August 2011, a final fully franked dividend of \$0.08 for the year ended 30 June 2011 (2011 Final Dividend). The record date for this dividend was 9 September 2011 and it was paid on 30 September 2011.

22. The 2011 Final Dividend represented the ordinary final dividend payable by The Rock in respect of the year ended 30 June 2011 and its payment was not conditional on the Scheme being approved or implemented. The 2011 Final Dividend was paid out of accounting profits (retained earnings) derived by The Rock and was funded by The Rock from existing cash reserves.

2012 Interim Dividend

23. On 21 November 2011, The Board of The Rock resolved to pay an early interim fully franked dividend for the 2012 financial year of \$0.06 (2012 Interim Dividend). Payment of this dividend was conditional on the successful implementation of the Scheme. The record date for the 2012 Interim Dividend was 8 December 2011 and the payment date was 19 December 2011.

24. The 2012 Interim Dividend was paid out of accounting profits (retained earnings) derived by The Rock prior to the Implementation Date and was funded by The Rock from existing cash reserves. MyState did not provide any funds to The Rock to finance the payment of the 2012 Interim Dividend.

Other matters

25. For the purposes of subsections 124-780(4) and 124-780(5), no original interest holder in The Rock was, just before the relevant arrangement started, a member of a linked group which included The Rock and MyState.

26. There were no 'significant stakeholders' or 'common stakeholders' in relation to the Scheme within the meaning of those expressions in section 124-783.

27. Just before the arrangement started, both The Rock and MyState had at least 300 members and did not have concentrated ownership of the nature described in section 124-810.

Ruling**CGT event A1 happened on the disposal of The Rock shares to MyState**

28. CGT event A1 happened as a result of the disposal by a shareholder of their The Rock shares to MyState under the Scheme described in this Ruling (subsections 104-10(1) and 104-10(2)).

29. The time of the event was when The Rock shares were transferred to MyState on the Implementation Date of the Scheme (paragraph 104-10(3)(b)).

Capital gain or capital loss

30. A shareholder made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of each The Rock share exceeded its cost base. A shareholder made a capital loss if the capital proceeds were less than the reduced cost base of a The Rock share (subsection 104-10(4)).

Capital proceeds

31. The capital proceeds from the disposal of each The Rock share is the market value of the MyState shares received (worked out at the time that CGT event A1 happened) that is reasonably attributable to the disposal of a The Rock share (subsections 116-20(1) and 116-40(1)).

32. In working out the market value of the MyState shares received that is reasonably attributable to the disposal of each The Rock share, the Commissioner accepts the following formula:

$$\text{Market value of MyState share} \times \frac{\text{Total number of MyState shares received}}{\text{Total number of The Rock shares exchanged for MyState shares}}$$

33. The Commissioner accepts that the market value of a MyState share on the Implementation Date may be determined by reference to the volume weighted average price of MyState shares traded on the ASX on that day.

34. The capital proceeds from the disposal of each The Rock share to MyState under the Scheme will not include either the 2011 Final Dividend or 2012 Interim Dividend as it is considered, having regard to all the circumstances of the arrangement, that these dividends were not paid in respect of the CGT event happening (subsection 116-20(1)).

If a capital gain is made

Scrip for scrip roll-over

35. Subject to the qualification in paragraph 36 of this Ruling, a shareholder who makes a capital gain from the disposal of a The Rock share to MyState is eligible to choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

36. Scrip for scrip rollover cannot be chosen if any capital gain a shareholder makes from the replacement MyState shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

37. The only capital proceeds received by a shareholder were shares in MyState. Therefore, if a shareholder chooses scrip for scrip roll-over, the capital gain they make upon the disposal of a The Rock share to MyState is disregarded completely (subsection 124-785(1)).

Discount capital gain

38. A shareholder in The Rock who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a discount capital gain provided that the conditions in Subdivisions 115-A, and if applicable, 115-C are satisfied.

Cost base of MyState shares

39. The method for calculating cost base and reduced cost base of the MyState shares received by a shareholder in The Rock depends on whether the shareholder chooses scrip for scrip roll-over.

Scrip for scrip roll-over is not chosen

40. 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 MyState share is equal to the market value of The Rock shares that is reasonably attributable to the acquisition of the MyState share, worked out at the time of their acquisition on the Implementation Date (subsections 110-25(2) and 110-55(2), and section 112-30).

Scrip for scrip roll-over is chosen

41. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each MyState share is equal to the part of the cost base of the relevant The Rock shares that is reasonably attributable to the acquisition of the MyState share (subsections 124-785(2) and 124-785(4)).

Acquisition date of MyState shares

42. The acquisition date of the MyState shares received in exchange for The Rock shares is the date that the shares were issued to the shareholders, being the Implementation Date (item 2 of the table in section 109-10).

43. However, for the purpose of determining whether a capital gain made from any later disposal of their MyState shares is eligible to be treated as a 'discount capital gain', shareholders who choose scrip for scrip roll-over are taken to have acquired their MyState shares when they acquired the corresponding shares in The Rock (item 2 of the table in subsection 115-30(1)).

The anti-avoidance provisions

44. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit received in relation to either the 2011 Final Dividend or the 2012 Interim Dividend.

45. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit received in relation to either the 2011 Final Dividend or the 2012 Interim Dividend.

Commissioner of Taxation

11 January 2012

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.*

Availability of scrip for scrip roll-over

46. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. It 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 exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

47. 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:

- (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.

48. Under the scheme that is the subject of this Ruling, the conditions for roll-over under Subdivision 124-M are satisfied. The Ruling section provides a detailed explanation of the Commissioner's decision in this regard. Therefore, no further explanation is warranted.

The anti-avoidance provisions

Section 204-30

49. Section 204-30 applies where a corporate tax entity streams the payment of dividends, or the payment of dividends and the giving of other benefits, to its members in such a way that:

- (a) an imputation benefit is, or apart from this section would be, received by a member of the entity as a result of the distribution or distributions (paragraph 204-30(1)(a));
- (b) the member would derive a greater benefit from franking credits than another member of the entity (paragraph 204-30(1)(b)); and

- (c) the other member of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits (paragraph 204-30(1)(c)).

50. Relevantly, if section 204-30 applies, the Commissioner is vested with a discretion under subsection 204-30(3) to make a determination in writing that:

- (a) a specified franking debit arises in the franking account of the entity, for a specified distribution or other benefit to a disadvantaged member (paragraph 204-30(3)(a));
or
- (b) no imputation benefit is to arise in respect of any distributions made to a favoured member and specified in the determination (paragraph 204-30(3)(c)).

51. For section 204-30 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than the members who consequently do not receive franking credits, or do not receive the same amount of franking credits as they would have had streaming not occurred.

52. Under the current scheme The Rock shareholders received an imputation benefit as a result of the 2011 Final Dividend and the 2012 Interim Dividend. The benefit to the resident shareholders was in the form of a tax offset (paragraph 204-30(6)(a)); the benefit to the non-resident shareholders was in the form of an exemption from dividend withholding tax (paragraph 204-30(6)(e)). Accordingly, the resident shareholders derived a greater benefit from franking credits than the non-resident shareholders.

53. However, the 2011 Final Dividend and the 2012 Interim Dividend were paid to all shareholders in The Rock at the respective Payment Dates and were fully franked with Australian franking credits. Accordingly, it cannot be argued that The Rock directed the flow of distributions in such a manner as to stream the imputation benefits such that one class of members derived a greater benefit from the franking credits attached to the dividends, while the other members received lesser or no imputation benefits.

54. As the conditions in subsection 204-30(1) for the provision to apply are not met, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit received in relation to either the 2011 Final Dividend or the 2012 Interim Dividend.

Section 177EA of the ITAA 1936

55. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies to a wide range of schemes seeking to obtain a tax advantage in relation to imputation benefits. Subsection 177EA(3) of the ITAA 1936 provides that section 177EA of the ITAA 1936 applies if:

- (a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and
- (b) either:
 - (i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or
 - (ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and
- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and
- (d) except for this section, a person (the relevant taxpayer) would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and
- (e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

56. If section 177EA of the ITAA 1936 applies, the Commissioner may make a determination under subsection 177EA(5) of the ITAA 1936 that either a franking debit arises to the company in respect of each distribution paid to the relevant taxpayer (paragraph 177EA(5)(a) of the ITAA 1936) or, in the alternative, that no franking credit benefit arises in respect of a distribution paid to the relevant taxpayer (paragraph 177EA(5)(b) of the ITAA 1936).

57. The Rock is a corporate tax entity. The Scheme of Arrangement between The Rock and MyState for the disposal of the shares in The Rock to MyState pursuant to the Scheme is a scheme for the disposition of membership interests. Both the 2011 Final Dividend and the 2012 Interim Dividend are frankable distributions paid to The Rock shareholders as part of this scheme who could, therefore reasonably be expected to receive imputation benefits.

58. In the present case, the conditions of paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied. Accordingly, the issue is whether having regard to the relevant circumstances of the Scheme, it would be concluded that, on the part of The Rock or its shareholders, there is a purpose, more than merely an incidental purpose, of conferring an imputation benefit under the Scheme.

59. In arriving at a conclusion the Commissioner must have regard to the relevant circumstances of the scheme which include, but are not limited to, the circumstances set out in subsection 177EA(17) of the ITAA 1936. The relevant circumstances listed there encompass a range of circumstances which taken individually or collectively could indicate the requisite purpose. Due to the diverse nature of these circumstances, some may not be present at any one time in any one scheme.

60. The relevant circumstances of the Scheme indicate that there is no requisite purpose of conferring an imputation benefit under the Scheme. The 2011 Final Dividend and the 2012 Interim Dividend were fully franked, which was a continuation of The Rock's dividend policy to pay fully franked dividends. The Rock had only ordinary shares on issue and the 2011 Final Dividend and the 2012 Interim Dividend were paid to all The Rock Shareholders on a pro-rata basis in proportion to the number of shares that each The Rock shareholder held on the relevant Record Dates. The amount of the 2011 Final Dividend was largely consistent with dividends previously paid out by The Rock and allowed The Rock shareholders to share in the current profits of The Rock for the income year ended 30 June 2011. The amount of the 2011 Final Dividend and the 2012 Interim Dividend allowed The Rock shareholders to share in the accumulated profits of The Rock.

61. In considering the manner, form and substance of the Scheme, it is considered that the Scheme was not entered into for the purpose of enabling participating members to obtain an imputation benefit. Having regard to the relevant circumstances of the Scheme, the Commissioner has come to the view that the requisite purpose is not present and accordingly the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit received in relation to the dividends.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provisions	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Relevant entities	10
<i>The Rock</i>	10
<i>MyState</i>	13
Disposal of shares in The Rock	15
<i>The Scheme of Arrangement</i>	15
<i>The Scheme consideration</i>	18
<i>Ineligible overseas shareholders</i>	20
2011 Final Dividend	21
2012 Interim Dividend	23
Other matters	25
Ruling	28
CGT event A1 happened on the disposal of The Rock shares to MyState	28
Capital gain or capital loss	30
Capital proceeds	31
If a capital gain is made	35
<i>Scrip for scrip rollover</i>	35
Discount capital gain	38
Cost base of MyState shares	39
<i>Scrip for scrip roll-over is not chosen</i>	40
<i>Scrip for scrip roll-over is chosen</i>	41
Acquisition date of MyState shares	42
The anti-avoidance provisions	44
Appendix 1 – Explanation	46
Availability of scrip for scrip roll-over	46
The anti-avoidance provisions	49
Section 240-30	49
Section 177EA of the ITAA 1936	55
Appendix 2 – Detailed contents list	62

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- arrangement
- capital gains
- CGT event A1 – disposal of a CGT asset
- CGT roll-over relief
- disposal of assets
- disposal of shares
- dividend streaming arrangement
- exchange of shares
- franking credits
- scrip for scrip roll-over

Legislative references:

- ITAA 1936
 - ITAA 1936 177EA
 - ITAA 1936 177EA(3)
 - ITAA 1936 177EA(3)(a)
 - ITAA 1936 177EA(3)(b)
 - ITAA 1936 177EA(3)(c)
 - ITAA 1936 177EA(3)(d)
 - ITAA 1936 177EA(5)
 - ITAA 1936 177EA(5)(a)
 - ITAA 1936 177EA(5)(b)
 - ITAA 1936 177EA(17)
 - ITAA 1997
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 112-30
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 115-C
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 116-40(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-780(5)
 - 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)
 - ITAA 1997 124-810
 - ITAA 1997 204-30
 - ITAA 1997 204-30(1)
 - ITAA 1997 204-30(1)(a)
 - ITAA 1997 204-30(1)(b)
 - ITAA 1997 204-30(1)(c)
 - ITAA 1997 204-30(3)
 - ITAA 1997 204-30(3)(a)
 - ITAA 1997 204-30(3)(c)
 - ITAA 1997 204-30(6)(a)
 - ITAA 1997 204-30(6)(e)
 - ITAA 1997 975-500
 - Corporations Act 2001 Pt 5.1
 - TAA 1953
 - Copyright Act 1968
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ATO references

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