

CR 2024/75 - Southern Cross Payments Ltd - return of capital by in specie distribution of shares in ISX Financial EU Plc



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Status: **legally binding**

Class Ruling

Southern Cross Payments Ltd – return of capital by in specie distribution of shares in ISX Financial EU Plc

❗ 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 and capital gains tax consequences for ordinary shareholders of Southern Cross Payments Ltd (SCP) who received a return of capital from SCP by way of an in specie distribution of shares in ISX Financial EU Plc (ISXFEU) on 18 October 2021 (Implementation Date).
2. Details of this scheme are set out in paragraphs 19 to 40 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in the Appendix of this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you held ordinary shares in SCP and you:
 - were listed as a holder of SCP shares on the share register of SCP on 18 October 2021 (Record Date)
 - held your SCP shares on capital account – that is, you did not hold your SCP shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
 - did not acquire your SCP shares under an employee share scheme (as defined in section 83A-10), and

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- received the in specie distribution of shares in ISXFEU from SCP on the Implementation Date.

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 19 to 40 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

Capital gains tax consequences

Demerger relief is not available

7. The in specie distribution of shares in ISXFEU by SCP to its shareholders does not qualify as a 'demerger' as defined in subsection 125-70(1). This means that demerger relief (being demerger roll-over under Division 125) is not available for the transfer of shares.

CGT event G1

8. CGT event G1 happened when SCP made a return of capital to you in respect of the SCP shares you owned on the Record Date (section 104-135).

9. You will make a capital gain from CGT event G1 happening if the return of capital (4.76c) is more than the cost base of the SCP share. The capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

10. If you do not make a capital gain from CGT event G1, you reduce the cost base and reduced cost base of each of your SCP shares by 4.76c (subsection 104-135(4)).

Discount capital gain

11. You can treat a capital gain made when CGT event G1 happened as a discount capital gain if you acquired your SCP shares at least 12 months before the Implementation Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

Cost base and reduced cost base of your ISX Financial EU Plc shares

12. The first element of the cost base and reduced cost base of each ISXFEU share you acquired is 47.6c (subsections 110-25(2) and 110-55(2)).

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Acquisition date of your ISX Financial EU Plc shares

13. You are taken to have acquired your ISXFEU shares on the Implementation Date (table event number A1 (case 1) of subsection 109-5(2)).

Foreign resident shareholders of Southern Cross Payments Ltd shares

14. If you are a foreign resident, any capital gain you make from CGT event G1 is disregarded unless your SCP share is taxable Australian property (section 855-10).

15. Your SCP share is taxable Australian property if it:

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

Not an assessable dividend

16. No part of the return of capital will be included in your assessable income under subsection 44(1). This is because all the value of the ISXFEU shares was debited to the share capital account of SCP, meaning that it is not a 'dividend' under subsection 6(1).

Specific anti-avoidance provisions do not apply to deem an assessable dividend

17. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or a part, of the capital benefits provided to you by the transfer of ISXFEU shares on the Implementation Date. This is because SCP did not stream the provision of capital benefits to its shareholders as required by subsection 45A(1). Therefore, you will not include any part of the amount of the capital benefit in your assessable income under subsection 44(1).

18. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the capital benefit provided to you by the transfer of ISXFEU shares on the Implementation Date. This is because the purpose condition in paragraph 45B(2)(c) was not satisfied. Therefore, you will not include any part of the amount of the capital benefit in your assessable income under subsection 44(1).

Scheme

19. 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.

Southern Cross Payments Ltd

20. SCP was incorporated in Australia on 29 August 1996. SCP was formerly known as iSignthis Ltd.

21. The shares in SCP were suspended from trading on the Australian Securities Exchange from 2 October 2019.

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22. Prior to the Implementation Date, SCP had a number of wholly owned subsidiaries, one of which was ISXFEU. SCP was a holding company and the SCP group held payment service licences or memberships in both the European Economic Area and Australia.

ISX Financial EU Plc

23. ISXFEU was incorporated in Cyprus on 19 October 2015.

24. ISXFEU holds monetary financial services licences to operate as an authorised electronic money and payment institution in the European Economic Area and the United Kingdom.

25. ISXFEU, through its subsidiaries, develops financial and regulatory technology software.

26. Prior to the Implementation Date, SCP completed an internal restructure whereby all subsidiaries (with the exception of SC Payments AU Pty Ltd) were transferred under the control of ISXFEU.

27. ISXFEU had 110,079,450 ordinary shares on issue that were all held by SCP prior to the Implementation Date.

In specie distribution of shares in ISX Financial EU Plc

28. At a General Meeting on 12 October 2021, shareholders of SCP approved, for the purposes of sections 256B and 256C of the *Corporations Act 2001*:

- the issued share capital of SCP be reduced by an amount equal to the market value of the ISXFEU shares, and
- the reduction of capital be satisfied by SCP making a pro rata in specie distribution of the ISXFEU shares to all eligible shareholders of SCP at the Record Date, on the terms and conditions set out in the Explanatory Statement.

29. The date for determining entitlement of SCP shareholders to the in specie distribution of shares in ISXFEU was 18 October 2021 (Record Date).

30. On 18 October 2021 (Implementation Date), SCP shareholders received one ISXFEU share for every 10 SCP shares that they held on the Record Date. Shareholders were not required to contribute any payment for the ISXFEU shares.

31. As a result of the capital reduction and in specie distribution of ISXFEU shares, SCP shareholders owned shares in both SCP and ISXFEU.

32. On the Implementation Date, the distribution of ISXFEU shares having a market value of \$52,438,247 (47.6c per ISXFEU share) was debited to SCP's share capital account and SCP shareholders received a return of capital of 4.76c per SCP share held.

33. On the Implementation Date, SCP had issued capital of \$133,692,856 and accumulated losses of \$96,596,756.

Other matters

34. SCP has not made any returns of capital or declared any dividends since 2015.

35. Prior to the Implementation Date, SCP had never undertaken a reduction of share capital.

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36. Immediately before the Implementation Date, SCP's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).

37. Prior to the Implementation Date, 57% of SCP shares were held by foreign residents and the 2 largest SCP shareholders were foreign incorporated company shareholders.

38. Immediately before the Implementation Date, SCP had 1,100,792,118 fully paid ordinary shares on issue.

39. Just before the Implementation Date, the market value of ISXFEU was \$52,438,247.

40. On the Implementation Date, the sum of the market values of the assets of SCP that were taxable Australian real property (as defined in section 855-20) did not exceed the sum of the market values of the assets of SCP that were not taxable Australian real property.

Commissioner of Taxation

27 November 2024

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Appendix – Legislative provisions

41. This paragraph sets out the details of the provisions of the Income Tax Assessment Acts ruled upon or referenced in this Ruling.

Table 1: Provisions of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(1)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(1)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(c)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1997</i>	section 83A-10
<i>Income Tax Assessment Act 1997</i>	section 104-135
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(3)
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	subsection 109-5(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-25(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(2)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	subsection 115-25(1)
<i>Income Tax Assessment Act 1997</i>	Division 125
<i>Income Tax Assessment Act 1997</i>	subsection 125-70(1)
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 855-20
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

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References

Legislative references:

- Corporations Act 2001 256B

- Corporations Act 2001 256C

ATO references

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