


CR 2010/20 - Income tax: scrip for scrip: merger of MyState Financial Credit Union of Tasmania Limited and Tasmanian Perpetual Trustees Limited (MyState Financial Credit Union of Tasmania shareholders)

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Class Ruling

Income tax: scrip for scrip: merger of MyState Financial Credit Union of Tasmania Limited and Tasmanian Perpetual Trustees Limited (MyState Financial Credit Union of Tasmania shareholders)

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	26
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	32
Appendix 2:	
<i>Detailed contents list</i>	38

ⓘ 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 dealt with in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- subsection 110-25(2) of the ITAA 1997;
- subsection 110-55(2) of the ITAA 1997; and
- section 116-20 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies consists of members of MyState Financial Credit Union of Tasmania Limited (MSF) who:

- (a) are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- (b) received fully paid ordinary shares in MyState Limited (MyState) as a result of the implementation of the schemes of arrangement for the merger of MSF and Tasmanian Perpetual Trustees Limited (TPX);
- (c) have not applied for, or are not eligible for, scrip for scrip roll-over under Subdivision 124-M for their MSF Member Shares;
- (d) acquired their MSF Member Shares on or after 20 September 1985;
- (e) hold their MSF Member Shares on capital account; and
- (f) did not acquire their MSF Member Shares through an employee share scheme (as that term was defined in former section 139C of the ITAA 1936).

Qualifications

4. The Commissioner makes this Ruling based on the proposed scheme precisely 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 25 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 2009 to 30 June 2010. The Ruling continues to apply after 30 June 2010 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:

- Class Ruling application dated 15 October 2009;
- Merger Implementation Agreement dated 10 October 2008;
- Deed of Amendment: Merger Implementation Agreement dated 21 January 2009;
- Second Deed of Amendment: Merger Implementation Agreement dated 22 June 2009; and
- MSF Information Booklet dated 29 June 2009.

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

10. MSF is a public company limited by shares, which is registered as a company under the *Corporations Act 2001*. It was established on 18 November 1959.

11. MSF is an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution operating predominantly in Tasmania.

12. MSF is a mutual credit union. It has approximately 117,000 members each of whom is the holder of one or more MSF Member Shares. The MSF Member Shares, whilst forming the capital of MSF, are held under the principles of mutuality adopted by MSF.

13. Although some eligible MSF members hold more than one MSF Member Share, they are treated on the same basis as MSF members holding one MSF Member Share. Under the principles of mutuality on which MSF is currently structured, as set out in its constitution, each MSF member is treated equally and has the same members' rights.

14. MSF has only MSF Member Shares on issue. It does not have on issue any options over any of its MSF Member Shares or other interests.

15. On 10 October 2008, MSF and TPX entered into a Merger Implementation Agreement under which it was proposed that the two companies would merge to create a leading Tasmanian based integrated financial services group. The terms of the Merger Implementation Agreement were amended by the parties on 21 January 2009 and 22 June 2009

16. Under the merger transaction, MSF and TPX would become wholly owned subsidiaries of MyState and MyState would become an APRA regulated non-operating holding company. However, Court Orders needed to be obtained before either the MSF or the TPX schemes of arrangement could proceed.

17. MyState was incorporated as a public company on 8 October 2008 with issued capital of two ordinary shares for \$2.

18. The Effective Date of the MSF and TPX schemes of arrangement was 9 September 2009 (being the date the Court Orders were lodged with the Australian Securities and Investments Commission).

19. MyState was admitted to the Official List of the Australian Securities Exchange (ASX) on 9 September 2009.

20. Official quotation of MyState shares on the ASX commenced on 10 September 2009 on a deferred settlement basis.

21. Pursuant to the Merger Implementation Agreement, on the Implementation Date (17 September 2009), MSF members transferred their MSF Member Shares to MyState and MyState allotted MyState shares to MSF members.

22. Each MSF member received 387 MyState shares in exchange for their MSF Member Share.

23. MSF members were offered the opportunity to sell their MyState shares via a share sale facility free from brokerage charges. This occurred via an independent institutional book build process on 16 September 2009 and resulted in 14,409,588 MyState shares being sold at a price of \$2.50 per share.

24. The daily Volume Weighted Average Price (VWAP) of MyState shares on the Implementation Date was \$3.0455 as follows:

Date	Open	High	Low	Close	Volume	VWAP
17/09/2009	300	310	300	310	5,500	3.0455

25. MyState holding statements were despatched on 23 September 2009 and normal trading of MyState shares commenced on 24 September 2009.

Ruling

CGT event A1 happens on the disposal of MSF Member Shares to MyState

26. CGT event A1 happened as a result of the disposal by a MSF member of their MSF Member Share to MyState on the Implementation Date of the Scheme on 17 September 2009 (subsections 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

Capital gain or capital loss

27. An MSF member made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of their MSF Member Share exceeded its cost base. An MSF member made a capital loss if the capital proceeds were less than the reduced cost base of the MSF Member Share (subsection 104-10(4)).

Capital proceeds

28. The capital proceeds for the disposal of each MSF Member Share is the market value of the MyState shares received in exchange for the MSF Member Share (worked out as at the time that CGT event A1 happened) (subsection 116-20(1)).

Cost base and reduced cost base of MyState shares

29. The first element of the cost base and reduced cost base of each MyState share received in exchange for the MSF Member Share under the Scheme is that part of the market value of the MSF Member Share given in exchange for each MyState share on the Implementation Date (subsections 110-25(2) and 110-55(2)).

Market valuation

30. The Commissioner will accept the amount of \$3.0455 as the market value of each MyState share on the Implementation Date of the Scheme.

31. The Commissioner will accept the amount of \$3.0455 as the first element of the cost base and reduced cost base of each MyState share acquired by an MSF member for the disposal of their MSF Member Share on the Implementation Date of the Scheme.

Commissioner of Taxation

16 June 2010

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.*

32. The Ruling section provides a detailed explanation of the tax consequences of the Scheme, the subject of this Ruling and the relevant legislative provisions.

33. However, further explanation is required in relation to the market value that the Commissioner is prepared to accept of the MyState shares on the Implementation Date of the Scheme.

Market value

34. 'Market value' is defined in section 995-1 as having a meaning affected by Subdivision 960-S. Section 960-400 states that the term market value is often used in the ITAA 1997 according to its ordinary meaning; however, in some cases that expression has a meaning affected by this subdivision. Special rules apply where the Goods and Services Tax affects the market value of an asset and in the case of market value of non-cash benefits. Neither of these special rules is relevant for the purposes of the market value of the MyState shares under the Scheme so market value has its ordinary meaning.

35. The daily VWAP of the MyState shares on the Implementation Date of 17 September 2009 was \$3.0455 as follows:

Date	Open	High	Low	Close	Volume	VWAP
17/09/2009	300	310	300	310	5,500	3.0455

36. The Commissioner will accept the VWAP of the MyState shares traded on the ASX on a deferred settlement basis on the Implementation Date as the market value of MyState shares as at the Implementation Date.

37. The Commissioner will accept that the VWAP of the MyState shares as at the Implementation Date represents that part of the market value of the MSF Member Share given in exchange for the MyState share.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Ruling	26
CGT event A1 happens on the disposal of MSF Member Shares to MyState	26
Capital gain or capital loss	27
Capital proceeds	28
Cost base and reduced cost base of MyState shares	29
Market valuation	30
Appendix 1 – Explanation	32
Market value	34
Appendix 2 – Detailed contents list	38

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2009/41; CR 2010/20;
TR 2006/10

Subject references:

- CGT capital proceeds
 - CGT event A1 – disposal of CGT asset
 - CGT events
 - CGT cost base
 - disposal of shares
 - market value cost base
 - schemes of arrangement
 - shareholders
- ITAA 1936 6(1)
 - ITAA 1936 139C
 - ITAA 1997
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 Subdiv 960-S
 - ITAA 1997 960-400
 - ITAA 1997 995-1
 - TAA 1953
 - Copyright Act 1968
 - Corporations Act 2001

Legislative references:

- ITAA 1936
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ATO references

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ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT event A1 – disposal of a CGT asset