

PRODUCT RULING - BR Prd 05/09

This is a product ruling made under section 91F of the Tax Administration Act 1994.

Name of the Person who applied for the Ruling

This Ruling has been applied for by SkyCity Consolidated Group – IRD No 63-352-039

Taxation Laws

All legislative references are to the Income Tax Act 2004 unless otherwise stated.

This Ruling applies in respect of:

- Section CB 2,
- Section CB 3;
- Section CB 4;
- Section CD 2;
- Section CD 3(1);
- Section CD 4(1);
- Section CD 5(1);
- Section EA 1;
- Section EA 2.

The Arrangement to which this Ruling applies

The Arrangement is the issue of bonus shares by SkyCity Entertainment Group Ltd (“the Company”) and the offer by the Company of an option to redeem the shares under which shareholders elect to retain the shares and then sell the shares. Further details of the Arrangement are set out in the paragraphs below.

1. The Company, a member of the SkyCity Consolidated Group (“the Group”), is a public company. The Company was incorporated in New Zealand. The Company has in excess of twenty thousand ordinary shareholders, a very small percentage of whom are likely to be taxable at the 39% marginal income tax rate.
2. The Company typically distributes two dividends a year to shareholders - an interim dividend paid in April and a final dividend paid in October. Until April 2005 dividends were paid in cash without a reinvestment option. The Company has previously fully imputed all dividends paid and will continue to do so in the period for which this Ruling applies. At the time the Company pays dividends it has often not had sufficient imputation credits in its imputation credit account to fully impute the dividends. In these circumstances it has paid further income tax sufficient to ensure there is not a

debit balance in its imputation credit account at year end and it will continue, if necessary, to pay further income tax during the period for which this Ruling applies so that it will have sufficient imputation credits in its imputation credit account at the end of each imputation year to have fully imputed a cash dividend equal to the amount of the bonus issue which is not redeemed in each and every year during the term of the Arrangement.

3. The Board of the Company has been considering ways to maintain the Company distribution policy without reducing its equity base (i.e. ways to make distributions without negatively impacting cashflow). Maintenance of the equity base is a high priority for the Company at the current time due to recent expansion activity undertaken by the Group, including the acquisition of interests in casinos located in Christchurch and Darwin, Australia, an increase in its shareholding in SkyCity Leisure and Riverside Casino, as well as the development of its Adelaide facilities.
4. On 21 February 2005 the Company announced that it would introduce a new dividend reinvestment plan (DRP) under which shareholders may choose to reinvest all or part of their cash dividends in additional shares in the Company. The DRP was available in respect of the interim dividend for the 2005 financial year paid on 1 April 2005. Additional shares issued under the DRP were issued at their market price but in terms of the Offer Document dated 9 March 2005 the Board may determine that the shares will be issued at a discount. The Company has issued 1,212,484 new shares to shareholders under the DRP in respect of the dividend of \$0.12 per share paid on 1 April 2005. These new shares represent 0.289 percent of the ordinary shares in the Company.
5. The Board has been considering an alternative mechanism that would encourage share uptake while still giving those shareholders who require a cashflow a mechanism by which to receive cash. Under the proposed plan bonus shares will be issued to all shareholders. The default option under the plan would be that shareholders retain the shares. It is intended that the Arrangement would continue in effect for an indefinite period in order to build up the shareholder equity base to a satisfactory level.
6. The estimated maximum amount which would be paid by the Company in respect of the redemption of shares under each bonus issue would be 5 percent of the market value of all shares in the Company.

Details of proposed bonus issue

7. The Company will issue a notice to shareholders informing them that they will be issued with bonus shares. The shares will be ordinary shares. The number of shares that a shareholder would receive would be based on:
 - (i) the net amount the shareholder would have received if the Company had declared and paid a cash dividend rather than proceeding with the bonus issue; and

- (ii) the weighted average of the Company's share price for the five trading days following the relevant record date, less a discount of not more than 5% (and excluding brokerage fees). The discount will be included in the calculation to encourage share retention.

- 8. The number of bonus shares to be issued to a shareholder would be calculated in accordance with the following formula:

$$\text{Number of shares} = \frac{S \times A}{P \times D}$$

where:

- S is the number of ordinary shares in the Company held by the shareholder before the bonus issue;
- A is the amount per share (expressed in cents and fractions of cents (after deduction of any amounts of resident withholding, or other, taxes, if any)) which would have been distributed to the shareholder if the Company had instead made a cash distribution;
- P is the weighted average sale price for the Company's shares (expressed in cents and fractions of cents) based on trades of those shares on the NZSX on the five trading days immediately following the relevant record date; and
- D is calculated as (1 – Discount) expressed as a decimal.

(A mechanism for “roundings” will also be included in the above calculation.)

- 9. At the same time shareholders will be notified that the Company will provide an off-market facility available to allow shareholders to make an election to redeem their bonus shares for the equivalent cash value. The option to redeem will be made available at the time of notification of the issue of the bonus shares. The aggregate buyback price for a shareholder's bonus shares would be the number of shares issued to the shareholder multiplied by “(P x D)” in the above calculation.
- 10. The discount to be applied will depend on the market at the time of the announcement and will consequently be flexible depending on anticipated market reaction. The higher the discount the more likely shareholders will retain the shares. Conversely where the discount is too low there is less incentive to retain the shares. The Directors, in determining the level of discount, have sought to be fair to all shareholders by determining a rate which favours retention but does not appear to harshly penalise shareholders (through dilution) who have primarily invested for the regular cash flow..
- 11. The approximate timetable for each bonus issue and buy back (based on NZ Companies Act and NZSX Listing Rule requirements) would be as follows:

Day 1

Notice to NZX and ASX of proposed bonus issue (Appendix 7 NZSX Rules and ASX equivalent) including notice of value of bonus shares to be issued (as a \$ value per share held).

Day 15 (first Friday at least 10 business days after Day 1)

Record date for Bonus Share entitlement.

Day 22 (5 business days after Day 15)

Determination of strike price for determining number of bonus shares to issue and resulting bonus share ratio.

Day 26 (say 4 days after day 22)

Details of bonus shares to be issued and buyback offer sent to shareholders. Shareholders given 14 days to elect whether to accept buy back offer.

Day 41 (15 days after Shareholders notified)

Date for shareholder acceptances of buy back offer.

Day 43

Issue of Bonus Shares and completion of buyback.

Day 45

Holding statements and payment cheque distributed.

Reasons for the structure of the Arrangement

12. The commercial advantages which the Company seeks to achieve from the Arrangement are as follows:
 - a) The reduction of the amount of the net cash outflow;
 - b) The maintenance as much as possible of the Company's equity base in light of the recent and planned business expansions;
 - c) The maintenance of the Company's policy of making two distributions a year to shareholders;
 - d) The provision of a mechanism for those shareholders who wish their share of profits to be retained within the Company;
 - e) The prevention of any negative impact on the Company's share price;

- f) Due to the decrease in the dividends paid by the Company, the reduction of the amount of imputation credits used.
 - g) The provision of a mechanism for those shareholders who wish to receive cash.
13. The Company considers that, as with many New Zealand stock exchange listed companies, its dividend policy and perceptions of its dividend policy has a direct impact on the share price of the Company. The Company has historically maintained a bi-annual high yield dividend policy. As a result investors who require an income stream from their investments may be attracted to invest in the Company. The level of capital growth in the Company, however also may make it attractive to shareholders who are seeking a capital gain. The Company considers that if the redemption option were not available material numbers of shareholders, requiring income from their shares, might seek to exit the stock, thereby having a negative impact on share price. Historically where a Company has reduced its dividend payout ratio this has had a negative impact on the share price.
14. The share issue has been structured to maximise the proportion of shares retained. The Arrangement operates so as to issue shares to all shareholders and give them the option of redeeming within a set period. Shareholders would have two weeks to decide whether to accept the offer to redeem the shares. The Company considers that if shareholders are required to apply for redemption of the shares, the level of share uptake should increase as the default result for shareholders who do not act will be that they retain the shares.
15. The Company also considers that a bonus issue in lieu would be less well received by its shareholders and the investment market in general than the Arrangement. The Company considers, on reasonable grounds, that denying shareholders who do not respond to the notice of a bonus issue within a specified timeframe the opportunity to receive cash is unlikely to be viewed favourably by shareholders.
16. The market reaction to the change in policy is unknown but the Company would anticipate that approximately 40 – 50 percent of the amount of the bonus issue would be retained by shareholders.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) The Company will not elect that the bonus issue will be treated as a “taxable bonus issue” (as defined in section OB 1).
- b) For the purpose of the Companies Act 1993 and the NZX Listing Rulings the Arrangement is a pro rata bonus issue to all existing shareholders followed by an acquisition by the Company of its own shares.

- c) During the period of this Ruling the Company will have sufficient imputation credits in its imputation credit account at the end of each imputation year to have fully imputed a cash dividend equal to the amount of the bonus issue which is not redeemed in each and every year during the term of the Arrangement.
- d) The advantages that the Company is seeking to obtain from implementing the Arrangement are as set out in paragraph 12 of this Ruling.
- e) The primary reason that the Company has chosen to implement this Arrangement as compared to other similar arrangements, such as its existing DRP, is that it considers, on reasonable grounds, that it will result in materially more shares being retained by shareholders, and thus greater funds retained by the Company, than under alternative available arrangements, and the Company has no advice or information contrary to or inconsistent with this that has not been disclosed to the Rulings Unit. This has the purpose of enabling the Company to retain profits for the expansion of its business and encouraging and maximising the retention of bonus shares while preventing any negative impact on the Company's share price and preventing any negative perceptions by the market of the Company's profit distribution policy.
- f) The Company has not taken individual shareholders' tax consequences into account in deciding to implement this Arrangement.
- g) The Company has disclosed to the Rulings Unit all advice, analysis or other documentation relating to the purposes and advantages of implementation of this Arrangement.

How the Taxation Laws apply to the Arrangement

Subject in all respects to any assumption or condition stated above, the Taxation Laws apply to the Arrangement as follows:

- The bonus issue is a non-taxable bonus issue (as defined in section OB 1) and does not constitute dividends as defined in sections CD 3(1), CD 4(1) and CD 5(1).
- Amounts derived by shareholders from the sale of bonus shares are not gross income under sections CB 2, CB 3, CB 4 or CB 5 where each of the following apply:
 - a) The shareholder is not dealing in shares; and
 - b) The sale of shares is not part of any business carried on by the shareholder; and
 - c) The shareholder did not acquire the shareholder's original shares for the purpose of sale and at the time the original shares were acquired,

the shareholder did not know that bonus shares would be issued by the Company.

- The bonus shares will have a nil cost for the purposes of Part E and section EA 2. No deduction will be allowable to shareholders in respect of the bonus shares unless:
 - Bonus shares are trading stock or revenue account property of a shareholder; and
 - The value of the bonus shares is taken into account in determining the shareholder's opening stock for the purpose of section EA 1(2) and (3) or in allocating an allowable deduction under section EA 2.

in which event a deduction will be allowable to the extent that a cost is attributed to the bonus shares, from the cost basis of other shares held by the shareholder, under one of the cost flow methods specified in section EB 7.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 5 December 2005 and ending on 31 March 2009.

This Ruling is signed by me on the 5th day of December 2005.

Howard Davis
Senior Tax Counsel