



Class Ruling

Income tax: scrip for scrip roll-over: exchange of units in Convertible Adjusting Rate Security Trust for Transurban Securities

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❶ 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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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);
- section 109-10 of the ITAA 1997;
- subsection 115-30(1) of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to whom this Ruling applies is the holders of the Convertible Adjusting Rate Security (CARS) Preferred Units who:

- (a) hold their CARS Preferred Units on capital account;
- (b) compulsorily transfer their CARS Preferred Units to Transurban Holding Trust (THT) in exchange for Transurban Securities;
- (c) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936*; and
- (d) are not a 'significant stakeholder' or a 'common stakeholder' as defined in Subdivision 124-M.

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 13 to 20 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 2006 to 30 June 2007. However, the Ruling continues to apply after 30 June 2007 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

9. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. 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:

- (a) Class Ruling application dated 2 April 2007;
- (b) Transurban CARS Trust Constitution dated 25 February 2003 (CARS Trust Constitution);
- (c) CARS combined Prospectus and Product Disclosure Statement provided on 2 April 2007; and
- (d) Correspondence and emails in relation to the Class Ruling application.

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

Details of the offer

14. Transurban Infrastructure Management Limited (TIML) as the responsible entity of the Transurban CARS Trust (CARS Trust) issued on 14 April 2003, 4.3 million CARS preferred units as a means of financing the Transurban Group's capital contribution to the Westlink Motorway Partnership.

15. The CARS Trust is a registered managed investment scheme and is listed on the Australian Securities Exchange.

16. Under the CARS Trust Constitution, the CARS Preferred Units could be converted in 3 ways:

- holder exchange;
- trigger event; or
- mandatory conversion.

17. The arrangement that is the subject of this Ruling involves the mandatory conversion, as stated in the Collateral Terms to the CARS Trust Constitution, of all CARS Preferred Units in two tranches for Transurban Securities.

18. A Transurban Security is a stapled security comprised of 3 assets:

- a share in Transurban Holdings Limited (THL);
- a share in Transurban International Limited (TIL); and
- a unit in Transurban Holding Trust (THT).

19. On 18 October 2006, the Board of TIML decided that the CARS Preferred Units no longer suited the commercial objectives of the Transurban Group and as a consequence resolved to convert on a mandatory basis all CARS Preferred Units in accordance with Clause 4 of the Collateral Terms of the CARS Trust Constitution.

20. As a result of this decision TIML announced on:

- 23 October 2006 its intention on 2 January 2007 to exercise its right to convert the first 50% of all CARS Preferred Units outstanding to Transurban Securities (the first tranche);
- 21 February 2007 its intention on 16 April 2007 to exercise its option to convert the remaining CARS Preferred Units to Transurban Securities (the second tranche).

Ruling

Disposal of CARS Preferred Units

21. CGT event A1 happens as a result of a CARS holder disposing of the CARS Preferred Units under the Scheme (section 104-10).
22. CGT event A1 happens:
- when the conversion occurred under the first tranche, the conversion of a CARS Preferred Unit on 2 January 2007 (subsection 104-10(3)); and
 - when the conversion occurred under the second tranche, the conversion of a CARS Preferred Unit on 16 April 2007 (subsection 104-10(3)).
23. A CARS holder makes a capital gain from CGT event A1 happening if the capital proceeds of a CARS Preferred Unit exceeded the cost base of the CARS Preferred Unit. Alternatively, a CARS holder makes a capital loss from CGT event A1 happening if the capital proceeds of a CARS Preferred Unit are less than the reduced cost base of the CARS Preferred Unit (subsection 104-10(4)).

Acquisition date of the replacement Transurban Securities

24. The acquisition date of the replacement Transurban Securities is the date the conversion occurred (item 2 of the table in section 109-10).
25. For CARS holders who choose scrip for scrip roll-over, the acquisition date of their replacement Transurban Securities for CGT discount purposes is the date that they acquired the corresponding CARS Preferred Units that they disposed of for the relevant replacement Transurban Securities (item 2 of the table in subsection 115-30(1)).

Availability of scrip for scrip roll-over

26. The replacement Transurban Security is a stapled security comprised of 3 assets:
- a share in THL;
 - a share in TIL; and
 - a unit in THT.

27. CARS holders, to the extent they received THT units in exchange for their CARS Preferred Units, are eligible to choose scrip for scrip roll-over under the arrangement if:

- (a) they acquired their CARS Preferred Units on or after 20 September 1985 (paragraph 124-781(3)(a));
- (b) apart from the roll-over under Subdivision 124-M, they would make a capital gain from the CGT event A1 that happened to their CARS Preferred Units (paragraph 124-781(3)(b)); and
- (c) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement THT unit (paragraph 124-795(2)(a)).

Consequences of scrip for scrip roll-over for CARS holders

28. A CARS holder who received THT units for the disposal of their CARS Preferred Units and chooses roll-over may disregard the capital gain from the disposal to the extent that the CARS holder receives THT units.

29. The capital gain is not disregarded to the extent that the CARS holder received THL and TIL shares for the disposal of their CARS Preferred Units (subsection 124-790(1)).

30. The first element of the cost base of each THT unit will be worked out as a portion of the cost base of the CARS Preferred Unit for which it was exchanged after reducing that cost base by so much of it that is attributable on a reasonable basis to the THL and TIL shares (subsections 124-785(2) and 124-785(3)). The first element of the reduced cost base will be calculated similarly (subsection 124-785(4)).

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.*

Disposal of CARS Preferred Units

31. CGT event A1 happens if there is a change in the ownership of an asset from one entity to another entity (section 104-10).

32. The time when CGT event A1 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

33. The conversion occurred in two tranches. For CARS holders who converted under the first or the second tranche, the time of the event is when the change of ownership occurs (subsections 104-10(1), 104-10(2) and 104-10(3)).

34. The time of the CGT event A1 is also relevant in determining the capital proceeds received for each CARS Preferred Unit. The capital proceeds from a CGT event are the money and market value of any property received or entitled to be received, worked out at the time the CGT event happens (subsection 116-20(1)).

35. CARS holders must therefore determine the market value of a THL share, TIL share and THT unit at the time they disposed of their CARS Preferred Units.

Acquisition date of the replacement Transurban Security

36. The acquisition date of the replacement Transurban Security is the date they were issued to each CARS holder. This is the same date as the conversion (section 109-10).

37. For CARS holders who choose scrip for scrip roll-over, the acquisition date of the replacement Transurban Security for CGT discount purposes is the date that they acquired their original CARS Preferred Units which were disposed of in exchange for the relevant replacement Transurban Security (item 2 of the table in subsection 115-30(1)).

Availability of scrip for scrip roll-over for CARS holders

38. Where scrip for scrip roll-over is chosen in respect of the capital gain arising on the disposal of the CARS Preferred Units, the capital gain from the disposal will be disregarded to the extent that the CARS holder received THT units.

39. If the CARS holder chooses roll-over, the cost base of each THT unit is worked out by reasonably attributing to it a proportion of the cost base of the CARS Preferred Unit for which it was exchanged and for which roll-over will be obtained.

Requirements for scrip for scrip roll-over – Subdivision 124-M

40. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a CARS holder to choose scrip for scrip roll-over.

Unit for unit exchange

41. The main conditions that are relevant to the Scheme that is the subject of this Ruling are:

- (a) units are exchanged for units in another trust (subparagraph 124-781(1)(a)(i));
- (b) fixed entitlements (paragraph 124-781(1)(b));
- (c) the exchange occurs under an arrangement (paragraph 124-781(2)(a));
- (d) conditions for roll-over are satisfied (subsection 124-781(3)); and
- (e) further conditions are not applicable (subsection 124-781(4)).

Units are exchanged for units in another trust

42. Subparagraph 124-781(1)(a)(i) requires an entity (a CARS holder) to exchange a unit (a CARS Preferred Unit) in a trust for a unit in another trust.

43. This requirement will be satisfied by a CARS holder who received a unit in THT as part of the consideration for the disposal of their CARS Preferred Units under the scheme.

Fixed entitlements

44. Paragraph 124-781(1)(b) requires that entities have fixed entitlements to all of the income and capital of the original entity (CARS Trust) and the acquiring entity (THT).

45. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 13 of this Ruling; and
- (b) all the facts comprising the arrangement as described in paragraphs 14 to 20 of the Ruling,

it is considered that, for the purposes of paragraph 124-781(1)(b), there are fixed entitlements to all of the income and capital of CARS Trust and of THT immediately before, during and immediately after the arrangement that is the subject of this Ruling. The scheme must also satisfy the conditions set out in the following paragraphs of this Ruling.

The exchange occurs under an arrangement

(a) 80% ownership

46. Paragraph 124-781(2)(a) requires that units in an entity (CARS Trust – the original entity) be exchanged in an arrangement that results in another entity (THT – the acquiring entity) becoming the owner of 80% or more of the voting units in the original entity (CARS Trust).

47. The Board of TIML decided on 18 October 2006 to convert all of the remaining CARS Preferred Units to Transurban Securities as soon as permitted by the CARS Trust Constitution. Under the CARS Trust Constitution, the CARS Trust was not permitted to convert more than 50% of the CARS Preferred Units before the first reset date (14 April 2007). TIML converted 50% of the CARS Preferred Units on 2 January 2007 and the remaining 50% were converted on 16 April 2007. The totality of these events allowed THT to acquire greater than 80% or more of the units in CARS Trust. Hence, this requirement is satisfied as THT became the owner of at least 80% of the CARS Preferred Units as a consequence of this arrangement. Each of these units satisfies the definition of ‘trust voting interest’ in subsection 995-1(1).

(b) All voting unit owners participate

48. Paragraph 124-781(2)(b) requires that the exchange of units is in consequence of an arrangement in which at least all owners of voting units in the original entity (CARS Trust) (apart from the acquiring entity or members of the acquiring entity’s wholly-owned group) could participate.

49. This requirement is satisfied because all the owners of Preferred Units in CARS Trust were entitled to participate in the arrangement, if the scheme is approved by the unit holders.

(c) Participation is on substantially the same terms

50. Paragraph 124-781(2)(c) requires that the exchange is in consequence of an arrangement in which participation is available on substantially the same terms for all owners of interests of a particular type in the original entity (CARS Trust).

51. This requirement was satisfied because the Scheme provided that the transaction will be executed on the same terms by all existing CARS holders.

Conditions for roll-over are satisfied

52. Paragraph 124-781(1)(d) requires that the conditions for roll-over outlined in subsections 124-781(3) and 124-781(4) be met. These conditions must be met in relation to each CARS Preferred Unit for which scrip for scrip roll-over will be chosen.

53. The conditions in subsection 124-781(3) are set out in paragraphs 54 to 60 of this Ruling.

(a) CARS Preferred Units are post-CGT assets

54. Paragraph 124-781(3)(a) requires the original interest holder (a CARS holder) to have acquired its original interest (a CARS Preferred Unit) on or after 20 September 1985.

55. All CARS Preferred Units are post-CGT assets as the units were issued on 14 April 2003.

(b) CARS holder would otherwise make a capital gain

56. Paragraph 124-781(3)(b) requires that, apart from the roll-over, the original interest holder (a CARS holder) would make a capital gain from a CGT event happening in relation to its original interest (the CARS Preferred Unit).

57. A capital gain was made on the disposal of a CARS Preferred Unit where the capital proceeds from the disposal of that unit was more than its cost base. Therefore, whether this condition is met will depend on the individual circumstances of the CARS holder.

(c) CARS holder must choose to obtain scrip for scrip roll-over

58. Paragraph 124-781(3)(c) requires that the original interest holder (CARS holder) chooses the roll-over, or if section 124-782 applies to it for the Scheme, it and the replacement entity jointly choose to obtain the roll-over.

59. Section 124-782 has no application in the circumstances of the Scheme since there are no significant stakeholders or common stakeholders under the arrangement.

60. Subject to their eligibility, whether a CARS holder chooses to obtain roll-over in relation to the disposal of a CARS Preferred Unit is a question of fact for each CARS holder.

Further conditions are not applicable

61. Subsection 124-781(4) provides that the additional conditions must be satisfied if the original interest holder (a CARS holder) and the trustee of the acquiring entity (THT) did not deal with each other at arm's length, and neither the original entity nor the acquiring entity had at least 300 beneficiaries just before the arrangement started and:

- (a) the market value of the original interest holder's capital proceeds for the exchange must be at least substantially the same as the market value of its original interest; and
- (b) the replacement interest must carry the same kind of rights and obligations as those attached to the original interest.

62. Subsection 124-781(4) does not apply because CARS Trust and THT had at least 300 beneficiaries just before the arrangement started.

Exceptions to obtaining scrip for scrip roll-over are not applicable

63. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen. Paragraphs 64 to 71 of this Ruling set out why these exceptions are not applicable.

(a) CARS holders are residents of Australia

64. Subsection 124-795(1) provides that roll-over is not available if the original interest holder (a CARS holder) is a foreign resident and the replacement entity is not an Australian resident.

65. The class of entities to whom the Ruling applies is limited to CARS holders who were residents of Australia at the time of the implementation of the Scheme. As a consequence, the exception in subsection 124-795(1) will not apply to limit the Ruling in this regard.

(b) A capital gain cannot (apart from the roll-over) be otherwise disregarded

66. Paragraph 124-795(2)(a) provides that the roll-over is not available if any capital gain the original interest holder (a CARS holder) might make from their replacement interest (a Transurban Security) would be disregarded (except because of a rollover).

67. Whether the capital gain arising, because of the disposal of a Transurban Security, will be disregarded under another provision of the ITAA 1997 (for example, the CARS Preferred Units are trading stock held by the CARS holder) is a question of fact for each CARS holder. Paragraph 3(a) of this Ruling limits the application of this Ruling in this regard.

(c) Acquiring entities are not foreign residents

68. Paragraph 124-795(2)(b) provides that roll-over is not available if the original interest holder (a CARS holder) and the acquiring entity (THT) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a CARS Preferred Unit) and the acquiring entity (THT) is a foreign resident.

69. This exception will not apply as the CARS holders and THT were not members of the same wholly-owned group just before the Scheme was implemented. In addition, THT is not a foreign resident.

(d) No roll-over is available under either Division 122 or Subdivision 124-G

70. Subsection 124-795(3) provides that scrip for scrip roll-over is not available if a roll-over can be chosen under Division 122 or Subdivision 124-G.

71. This exception does not apply as the circumstances of the Scheme are such that a roll-over under Division 122 or Subdivision 124-G is not available.

Consequences of roll-over

72. Scrip for scrip roll-over enables a share holder or unit holder to disregard all or part of a capital gain from a share or unit that is disposed of as part of a corporate takeover or merger if the share holder or unit holder receives a replacement share or unit in exchange. The cost base of the replacement share or unit is determined by apportioning on a reasonable basis the cost base of the original share or unit which is exchanged for it (subsections 124-785(2) and 124-785(3)).

73. If the only capital proceeds the shareholder or unit holder receives are replacement shares or replacement units, respectively, the capital gain is disregarded completely (subsection 124-785(1)). All of the cost base of the original shares and units can be allocated to the replacement shares or units (subsection 124-785(2)).

Consequences of scrip for scrip roll-over for CARS holders

74. A CARS holder who received THT units and THL and TIL shares for the disposal of their CARS Preferred Units may choose only a partial roll-over. Roll-over is not available to the extent that the capital gain is attributable to the THL and TIL shares (ineligible proceeds) received (subsection 124-790(1)).

75. In calculating the capital gain attributable to their ineligible proceeds, a CARS holder should deduct from those proceeds a reasonable portion of the cost base of their CARS Preferred Unit (just before its disposal) (subsection 124-790(2)).

76. In making a reasonable apportionment of the cost base of a CARS Preferred Unit, it is appropriate for a CARS holder to consider the value of the ineligible proceeds (the value of the THL and TIL shares) compared with the value of the THT units on the date that CGT event A1 happened to their CARS Preferred Unit.

77. The cost base of the CARS Preferred Units, reduced by that portion that is taken into account in working out the capital gain in respect of the ineligible proceeds, will form the first element of the cost base of the THT units (subsections 124-785(2) and 124-785(3)).

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References

Previous draft:

Not previously issued as a draft

Subject references:

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- fixed entitlement
- income
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- unit
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Legislative references:

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Div 122
- ITAA 1997 Subdiv 124-G
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781(1)(a)(i)
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- ITAA 1997 124-795
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- ITAA 1997 995-1(1)
- TAA 1953
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