



Class Ruling

Income tax: scrip for scrip: restructure of the Strathearn Group

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ⓘ 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);
- Section 109-10 of the ITAA 1997;
- Section 110-25 of the ITAA 1997;
- Section 110-55 of the ITAA 1997;
- Section 112-30 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- Subdivision 115-C of the ITAA 1997;
- Section 116-20 of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997;

- Section 124-775 of the ITAA 1997;
- Section 124-780 of the ITAA 1997;
- Section 124-781 of the ITAA 1997
- Section 124-785 of the ITAA 1997;
- Section 124-795 of the ITAA 1997; and
- Section 124-800 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is unitholders who:

- (a) hold units in Strathearn Unit Trust (SUT) and Strathearn Insurance Brokers (QLD) Trading Trust (STT);
- (b) dispose of their capital units in STT in exchange for capital units in SUT; and/or
- (c) dispose of their income units in STT in exchange for income units in SUT;
- (d) are Australian residents within the meaning of the term 'resident of Australia' in subsection 6(1) of *the Income Tax Assessment Act 1936* (ITAA 1936);
- (e) are not temporary Australian residents within the meaning of the term 'temporary resident' in section 995-1; and
- (f) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their units.

(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 arrangement 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 7 to 23 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 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 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.

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

Background

10. SUT and STT (the Trusts) carry on general insurance broker and risk adviser businesses.

11. Part of the businesses are operated by Secure Enterprises Pty Ltd (Secure Trustee Co) as trustee for the Strathearn Unit Trust (that is, SUT).

12. The remaining part of the businesses are operated by Parkstar Enterprises Pty Ltd (Parkstar Trustee Co) as trustee for the Strathearn Insurance Brokers (QLD) Trading Trust (that is, STT) and its wholly owned subsidiary company, Kings Park Enterprises Pty Ltd (KPE).

13. The Trusts are not 'public trading trusts for the purposes of Division 6C of Part III of the ITAA 1936.

14. The Trusts currently have a majority of common unitholders (holding approximately 62% of the units in each trust). Of these, Austbrokers Limited (Austbrokers), a publicly listed company, holds 50% of the units in each trust.

15. In September 1993 SUT was established under a Unit Trust Deed (SUT Trust Deed). In addition, the unitholders of SUT, its trustee company and various Austbrokers entities (including Austbrokers Limited) have entered into a Securityholders deed (SUT Securityholders Deed) dated 31 August 2007 and amended on 25 February 2012.

16. STT was established under a Unit Trust Deed dated 1 July 1998 (STT Trust Deed). In addition, the unitholders of STT, its trustee company and various Austbrokers entities (including Austbrokers Pty Limited) have entered into a Securityholders deed (STT Securityholders Deed) dated 31 August 2007 and amended on 25 February 2012.

17. Both Trusts each have two classes of units on issue, being Capital Units and Income Units. Holders of Capital Units have a beneficial entitlement to a fraction of the income and capital of the respective trust, based on the proportional unitholding (refer clause 4.3 of the SUT Trust Deed and clause 8.6.3 of the STT Trust Deed). Capital Unitholders have the right to vote at unitholder meetings.

18. Holders of Income Units are entitled to a share of the income of their respective trusts, *pari passu* with the Capital Unitholders (refer clause 4.4 of the SUT Trust Deed and clause 8.6.4 of the STT Trust Deed). Income Unitholders do not have the right to vote at unitholder meetings.

19. Under the Securityholders Deeds, the number of Capital Units and shares in the trustee company on issue are required to be the same. Also, any issue of capital units must be accompanied by a corresponding issue of shares in the respective trustee company. However, these provisions will be temporarily suspended contemporaneous with the Restructure, in accordance with the Securityholders Deeds.

20. All unitholders in the Trusts are Australian residents for tax purposes.

Overview of Scheme

21. To streamline the business operations of the Trusts and to improve the efficiency of decision making and administration, the trustees and unitholders of both Trusts have resolved to merge/consolidate the ownership structure of the Trusts.
22. On 3 September 2012, SUT will acquire all the units in STT via a scrip- for-scrip arrangement, on the following basis:
23. Holders of Capital Units in STT will be issued with 305.6 Capital Units in SUT in exchange for each STT Capital Unit purchased by SUT. This ratio is based on the relative values of the Trusts, which has been determined by a capitalisation of after-tax net profit, averaged over 4 financial years ending 30 June 2012.
24. Holders of Income Units in STT will be issued with 305.6 Income Units in SUT in exchange for each STT Income Unit purchased by SUT. This ratio was determined on the same basis as the ratio for the Capital Units.
25. Secure Trustee Co will subsequently acquire all the shares in Parkstar Trustee Co.

Ruling**CGT event A1**

26. CGT event A1 happens as a result of the disposal by an STT unitholder of their STT units to SUT (subsections 104-10(1) and (2)).
27. The time of the event is when the STT units are transferred to SUT on the Implementation Date (paragraph 104-10(3)(b)).

Capital gain or loss

28. An STT unitholder makes a capital gain when CGT event A1 happens if the capital proceeds from the disposal of each STT unit exceeds its cost base. An STT unitholder makes a capital loss if the capital proceeds are less than the STT unit's reduced cost base (subsection 104-10(4)).

Capital proceeds

29. The capital proceeds from the disposal of each STT unit is the market value of the SUT units received, worked out as at the time that CGT event A1 happens (subsection 116-20(1)).

Scrip for scrip roll-over

30. Subject to the qualification in the following paragraph, an STT unitholder who makes a capital gain from the disposal of an STT unit to SUT is eligible to choose scrip for scrip roll-over (section 124-781 and subsection 124-785(1)).

31. Scrip for scrip roll-over cannot be chosen if any capital gain the STT unitholder might make from their SUT units would be disregarded (except because of a roll-over) (paragraph 124-795(2)(a)).

32. The only capital proceeds received by an STT unitholder are SUT units. Therefore, if an STT unitholder chooses scrip for scrip roll-over, the capital gain they make upon the disposal of an STT unit to SUT is disregarded (subsection 124-785(1)).

Discount capital gain

33. An STT unitholder who makes a capital gain where roll-over is not chosen, or cannot be chosen, may 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 STT units

34. The method for calculating an STT unit holder's cost base and reduced cost base of each of the SUT units depends on whether scrip for scrip roll-over is chosen.

35. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the STT unitholder's cost base and reduced cost base of each SUT unit received is equal to the market value of the STT unit that is exchanged for the SUT unit. The market value of the STT unit is worked out at the time of the acquisition of the SUT unit on the Implementation Date (subsections 110-25(2), 110-55(2) and section 112-30).

36. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each SUT unit is worked out by reasonably attributing to it the cost base or reduced cost base of the relevant STT unit that is exchanged for the SUT unit (subsections 124-785(2) and 124-785(4)).

Acquisition date of SUT units

37. The acquisition date of the SUT units acquired in exchange for the STT units is the date that the SUT units are issued to the STT unitholders (item 3 of the table in section 109-10).

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

Commissioner of Taxation22 August 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

39. The tax consequences arising from and the relevant legislative provisions concerning the scheme are outlined in the Ruling part of this document.

40. 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 the holder of an interest to disregard a capital gain from an interest that is disposed of as part of a takeover or merger if the interest holder receives a replacement interest in a trust in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

41. Subdivision 124-M contains a number of conditions for, and exceptions to, an interest holder being eligible to choose scrip for scrip roll-over. The main requirements relevant to the scheme that is the subject of this Ruling are:

- (a) units in a unit trust are exchanged for units in another trust;
- (b) the unit holders have fixed entitlements to all of the income and capital of the original trust and the acquiring trust;
- (c) the exchange occurs as part of a single arrangement;
- (d) conditions for roll-over are satisfied;
- (e) further conditions are not applicable or are satisfied; and
- (f) exceptions to obtaining scrip for scrip roll-over are not applicable.

42. Under the scheme, the conditions for roll-over are satisfied and the Ruling section explains the Commissioner's decision.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- capital gains tax
- scrip for scrip rollover

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 Pt III Div 6C
- ITAA 1997
- ITAA 1997 104-10
- ITAA 1997 109-10

- ITAA 1997 110-25
- ITAA 1997 110-55
- ITAA 1997 112-30
- ITAA 1997 Subdiv 115-A
- ITAA 1997 Subdiv 115-C
- ITAA 1997 116-20
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-775
- ITAA 1997 124-780
- ITAA 1997 124-781
- ITAA 1997 124-785
- ITAA 1997 124-795
- ITAA 1997 124-800
- TAA 1953
- Copyright Act 1968

ATO references:

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