



Class Ruling

Income tax: exchange of units in a unit trust for shares in a company: 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 1977* (ITAA 1977);
- section 109-10 of the ITAA 1997;
- subsection 115-30(1) of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- subsection 124-15(2) of the ITAA 1997;
- subsection 124-15(3) of the ITAA 1997; and
- Subdivision 124-H of the ITAA 1997.

All 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 the unitholders who:

- hold units in Strathearn Unit Trust (SUT);
- dispose of their Capital Units in SUT in exchange for voting shares in Strathearn Insurance Group Pty Ltd (SIG); and/or
- dispose of their Income Units in SUT in exchange for non-voting shares in SIG;
- 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) at the time of disposal of their SUT units;
- are not 'temporary residents' of Australia within the meaning of section 995-1; and
- 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 9 to 28 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 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 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.

The Strathearn Group

10. The Strathearn Group comprises SUT, Strathearn Insurance Brokers (QLD) Trading Trust (STT) and Kingspark Enterprises Pty Ltd (KEP).

11. The Strathearn Group carries on general insurance broker and risk adviser businesses in Perth, Sydney, Brisbane and Adelaide.

12. The Perth, Sydney and Adelaide businesses are operated by Secure Enterprises Pty Ltd as trustee for SUT.

13. The Brisbane business is operated by Parkstar Enterprises Pty Ltd as trustee for STT and STT's wholly owned subsidiary KEP.

14. SUT and STT are not 'public trading trusts' for the purposes of Division 6C of the ITAA 1936.

15. The Strathearn Group has been undertaking a staged restructure in order to have a single operating company as the head of the Group, with the two trusts and the company to ultimately be fully owned as part of that Group.

16. The rationale for the restructure is to corporatise and streamline the business operations and to simplify the structural understanding for current and future investors into the Group.

17. The first stage of the restructure involved SUT acquiring all of the issued units of STT from the unitholders of STT on 3 September 2012.¹

18. SUT was established on 7 September 1993. It has two classes of units, being Capital Units and Income Units.

19. Capital Units (currently 2,960,164 units on issue) entitle the holders to a fraction of the income and capital of the trust, based on their proportional unitholding, as well as the right to vote at unitholder meetings.

20. Income Units (currently 1,140,000 units on issue) entitle the holders to share in the income of the trust together with the Capital Unitholders. Income Unitholders do not have a right to vote at unitholder meetings.

21. Under the current stage of the restructure, the unitholders of SUT will exchange their units in SUT for shares in a newly formed company Strathearn Insurance Group Pty Ltd (SIG).

22. SIG has two classes of shares – Voting Shares and Non-voting Shares. Voting Shares entitle the holders to receive a return of capital equivalent to the value paid for each Voting Share and a share of any surplus assets upon reduction of capital or winding up of the company. Non-voting Shares entitle the holders to receive a return of capital equivalent to the value paid for each Non-voting Share. The holders of Non-voting Shares are not entitled to receive any surplus assets upon reduction of capital or winding up of the company.

23. SIG was established on 14 January 2013 with 1 Ordinary Share issued to an existing SUT unitholder. The share was cancelled one month later in February 2013 under a new constitution and replaced by a new Voting Share. It is intended that this share will ultimately be part of the shareholder's final shareholding in SIG, but has been issued in advance of the restructure in order to incorporate the company.

24. The proposed Implementation Date of the current stage of the restructure is 1 July 2013.

25. The proposed restructure contemplates the issue of 4,100,164 shares to the existing unitholders, being 2,960,163 Voting Shares and 1,140,000 Non-voting Shares plus the 1 Voting Share already issued in February 2013.

¹ Class Ruling CR 2012/64

26. Holders of Capital Units in SUT will be issued with one Voting Share in SIG in exchange for each Capital Unit they hold in SUT and nothing else.

27. Holders of Income Units in SUT will be issued with one Non-voting Share in SIG in exchange for each Income Unit they hold in SUT and nothing else.

28. Once completed the shares in Secure Enterprises Pty Ltd held by the current Capital Unitholders will also be transferred to SIG for nominal value, as the company is solely a trustee company.

Ruling

CGT event A1 – disposal of SUT units

29. CGT event A1 will happen as a result of the disposal by a SUT unitholder of their SUT units to SIG (subsections 104-10(1) and 104-10(2)).

30. The time of the event is when the SUT units are transferred to SIG on the Implementation Date (paragraph 104-10(3)(b)).

Capital gain or capital loss

31. A SUT unitholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a SUT unit exceed its cost base. A SUT unitholder will make a capital loss if the capital proceeds are less than the reduced cost base of the SUT unit (subsection 104-10(4)).

Capital proceeds

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

Subdivision 124-H roll-over

33. A SUT unitholder will be eligible to choose to obtain a CGT roll-over under Subdivision 124-H for the disposal of their SUT units to SIG as the conditions under sections 124-445, 124-450 and 124-465 will be satisfied.

Consequences of CGT roll-over

34. Any capital gain or capital loss made by a SUT unitholder on the disposal of their SUT units to SIG will be disregarded (subsection 124-15(2)).

35. The first element of the cost base or reduced cost base of each SIG share acquired under the restructure will be worked out as follows:

- sum the cost bases of the SUT units just before the restructure; and
- apportion that sum over the SIG shares acquired under the restructure (subsection 124-15(3)).

Acquisition date of SIG shares

36. The SIG shares are acquired by the SUT unitholders when they become the owner of the the SIG shares. This occurs on the Implementation Date when the SIG shares are issued to the SUT unitholders (item 2 of the table in section 109-10).

Acquisition date for the purposes of the CGT discount where CGT roll-over is chosen

37. For the purposes of determining eligibility for the CGT discount to any later disposal of their SIG shares, SUT unitholders who choose CGT roll-over under Subdivision 124-H will be taken to have acquired their SIG shares when they acquired the corresponding SUT units (item 2 of the table in subsection 115-30(1)).

38. For former STT unitholders who chose scrip for scrip roll-over under the first stage of the restructure,² the date of acquisition of the SIG shares will be taken to be the date the former STT units were acquired.

Commissioner of Taxation**12 June 2013**

² Class Ruling CR 2012/64

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.*

39. The CGT consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

40. The significant tax consequence is the availability of roll-over relief under Subdivision 124-H. It enables a unitholder of a unit trust to disregard a capital gain or capital loss from a unit that is disposed of as part of a reorganisation of the affairs of the unit trust where the unitholder becomes the owner of new shares in a company.

41. The roll-over provisions in Subdivision 124-H relating to an exchange of units in a unit trust for shares in a company contain a number of conditions for eligibility to choose roll-over relief. The main conditions in relation to a disposal case that are relevant to the scheme are:

- there must be more than one entity that owns all the units in the unit trust;
- there must be a scheme for reorganising the trust's affairs and consideration on disposal of the units consist of shares in the company and nothing else;
- all unitholders must dispose of their units in exchange for shares in the company;
- the company must own all the units in the unit trust just after all the exchanging members have disposed of their units in the unit trust (the completion time);
- just after the completion time, each unitholder must own a whole number of shares in the company;
- just after the completion, each unitholder must own a percentage of the shares in the company that were issued to all unitholders that is equal to the percentage of the units in the unit trust that the unitholder owned;
- just after the completion time, the unitholders must own all the shares in the company;
- the company must make the choice that the rules in section 124-470 will apply;
- the shares issued in the company must not be redeemable shares; and
- the ratio test in subsection 124-450(3) is met

42. Under the Scheme, all SUT unitholders will be exchanging their units on a one for one basis for the respective class of SIG shares. There are currently 2,960,164 Capital Units and 1,140,000 Income Units on issue.

43. In addition to the 1 Voting Share already allocated to an existing SUT unitholder, another 2,960,163 Voting Shares and 1,140,000 Non-voting shares will be issued to the existing SUT unitholders.

44. Each unit of each class currently on issue in SUT will be replaced by an issued share in SIG created with the exact same rights as existed for the units.

45. SIG will make the choice that the rules in section 124-470 will apply within 2 months of the completion time.

46. Accordingly, the conditions for roll-over under Subdivision 124-H will be satisfied.

Appendix 2 – Detailed contents list

47. 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
- Capital proceeds
- Cost base
- CGT event A1
- Reduced cost base
- CGT roll-over relief

Legislative references:

- ITAA 1997 104-10
 - ITAA 1997 109-10
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
 - ITAA 1997 124-10
 - ITAA 1997 124-445
 - ITAA 1997 124-450
 - ITAA 1997 124-465
 - ITAA 1997 124-470
 - ITAA 1997 Subdiv 124-H
 - TAA 1953
 - Copyright Act 1968
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ATO references

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