Class Ruling

Income tax: scrip for scrip roll-over: proposed merger and acquisition of units in RFM Chicken Income Fund

Contents Para

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 the Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 6-10 of the ITAA 1997;
- subsection 44(1) of the ITAA 1936;
- section 102M of the ITAA 1936;
- section 102T of the ITAA 1936;
- section 103-5 of the ITAA 1997;
- section 104-70 of the ITAA 1997;

- Division 104 of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 272-5 of Schedule 2 to the ITAA 1936;
- section 272-65 of Schedule 2 to the ITAA 1936; and
- section 995-1 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies consists of the Members of the RFM Chicken Income Fund (CIF) who:

- are residents of Australia as defined in subsection 6(1) of the ITAA 1936 on the date that they dispose of their interests in CIF under the scheme to which the Ruling relates;
- held their Interests in CIF on capital account on that date; 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 proposed scheme (incorporating the merger and listing on the Australian Securities Exchange (ASX) will only proceed if:

- at least 75% of CIF unitholders vote in favour of the merger with RFM RiverBank Fund (RBK) and the establishment of RFM Poultry (RFMP) the entity that will lease and operate the poultry farms owned by CIF;
- at least 75% of the RFM Australian Wine Fund (AWF) unitholders vote in favour of the merger with RBK; and
- at least 50% of RBK unitholders vote in favour of the merger with CIF and AWF.

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 8 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.

Date of effect

7. 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

8. 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

9. Rural Funds Management Limited (RFM) is the responsible entity for a number of agricultural funds including CIF and RBK.

10. RFM will hold a members meeting for CIF to vote on a special resolution for the establishment of RFMP and issue of units in RFMP to CIF unitholders by way of applying a proposed distribution to CIF unitholders against the new units in RFMP and the second part of the resolution is the merger with RBK.

11. RFM will hold a members meeting for RBK unitholders to vote on the merger with CIF.

12. The CIF fund was established by Deed dated 23 July 2003.

13. The RBK fund was established by Deed dated 11 February 2005.

14. RFMP will be a registered managed investment scheme to be listed on the National Stock Exchange (NSX).

15. CIF and RBK are resident unit trusts and also are registered managed investment schemes under Chapter 5C of the *Corporations Act 2001.*

Overview of the Scheme

16. In summary the proposed scheme, named the 'Revaluation' will incorporate the merger of CIF and AWF with RBK. The second part of the Revaluation is the listing of new units in Rural Funds Group (RFF) on the ASX.

17. The first stage of the proposed Revaluation is the renaming of RBK to RFF.

18. The second stage is the establishment of a new fund called RFMP which will be used to conduct the chicken operations and growing activities of CIF.

19. RFMP will be owned by unitholders of CIF which will be funded by CIF distributing funds to CIF unitholders and applying these to the acquisition of units in RFMP.

20. The third stage is the proposed merger between CIF and RFF by way of RFF acquiring all of the units in CIF by way of scrip for scrip.

21. Following the establishment of RFMP and the merging of CIF with RFF under stages 2 and 3, holders of units in CIF will be issued with 689 units in RFF and 107 units in RFMP for each 1000 units they hold in CIF.

22. The proposed scheme is part of a larger restructure involving the merger of CIF and RFF, and then the merger of RFF and AWF. Following these mergers, it is proposed to list RFF on the ASX.

23. This class ruling does not consider the merger of AWF with RFF.

Distribution to CIF Unitholders

24. The proposed distribution to CIF unitholders will be applied to the acquisition of units in RFMP on CIF unitholders behalf.

25. The proposed distribution is attributable to a mix of both capital and profits.

26. A calculation using the slice approach has determined that the proposed distribution will be attributable to:

- capital of the trust in the proportion of 42.33%; and
- profits of the trust in the proportion of 57.67%.

Other matters

27. For the purposes of subsection 124-781(4), both CIF and RBK will have at least 300 beneficiaries before the implementation of the arrangement.

28. There were no 'significant stakeholders' or 'common stakeholders' in relation to the scheme within the meaning of those expressions in section 124-783.

Ruling

Unit Trust Dividend

29. The payment of a distribution to CIF unitholders will constitute a Unit Trust Dividend (section 102M of the ITAA 1936).

Distribution to CIF Unitholders

30. Based on the slice approach method, 57.67% of the proposed distribution will be taken to have been paid out of profits derived by CIF for the purposes of subsection 102T(19) of the ITAA 1936.

31. This part of the proposed distribution will be assessable income to the CIF unitholder under section 6-5.

CGT event E4

32. Based on the slice approach it has been determined that 42.33% of the proposed distribution relates to capital (the non-assessable part).

33. The payment of the non-assessable part of the proposed distribution (a non-assessable payment) by CIF will result in CGT event E4 happening to the CIF unitholders in respect of each of their CIF units (section 104-70).

34. If the amount of the distribution relating to the non-assessable part is less than or equal to the cost base of the CIF unit, the cost base and reduced cost base of that CIF unit will be reduced (but not below zero) by that amount of the return of capital.

35. A CIF unitholder will make a capital gain when CGT event E4 happens if the sum of the distribution relating to the non-assessable part exceeds the cost base of the unit (subsection 104-70(4)). A CIF unitholder cannot make a capital loss when CGT event E4 happens to their CIF units.

RFM Poultry Units

36. The first element of the cost base and reduced cost base of each RFMP unit as a result of the distribution being compulsorily applied to acquire the units will be equal to the amount of the proposed distribution. (subsection 110-25(2) and section 110-55).

Scrip for scrip roll-over

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

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

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

Commissioner of Taxation
6 November 2013

Appendix 1 – Explanation

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.

Unit Trust Dividend

40. Section 102M of the ITAA 1936 provides that a unit trust dividend is any distribution made by the trustee of a prescribed trust estate, whether in money or property, to a unitholder and any amount credited by the trustee of a prescribed trust estate to a unitholder as a unitholder.

41. Section 102M of the ITAA 1936 also provides circumstances in which a payment or the provision of property is not a unit trust dividend.

42. No part of the distribution will not be considered a unit trust dividend for the following reasons:

- CIF was a public trading trust in the year; and
- the distribution was not in respect of the cancellation, extinguishment or redemption of a unit.

Distribution to CIF Unitholders

43. The payment of the unit trust dividend to the CIF unitholder will be assessable income to them (subsection 44(1) of the ITAA 1936) where the unit trust dividend is paid out of corpus (capital) of the trust estate and to the extent that it is attributable to profits derived by the trustee (subsection 102T(19) of the ITAA 1936). Profits may be derived by the trustee though they are unrealised, provided they have been ascertained by, for example, an asset revaluation.

44. The question of attribution in subsection 102T(19) of the ITAA 1936 goes to causation. In a case such as the present, the distribution to the CIF unitholders is drawn from the net value of the trust estate generally and is therefore not demonstrably attributable to either corpus or profit, but rather to both. In these circumstances, it is appropriate to apportion the distribution between corpus and profit in accordance with the proportions in which they make up the assets of the trust estate. This is the 'slice approach' to apportionment, which is in essence causation based and the most appropriate method of apportioning a distribution of assets between corpus (the unitholders' contributions to the trust) and profit in the absence of cogent reasons to do otherwise.

45. Based on the slice approach, it is considered that 57.67% of the distribution to CIF unitholders is attributable to profits derived by the Trustee of the CIF.

CGT event E4

46. Under section 104-70, CGT event E4 happens if the trustee of a trust makes a payment (including the provision of units in RFF) to a unitholder in respect of their unit in the trust, and some or all of the payment is not included in the unitholder's assessable income (the non-assessable payment).

47. It has been determined that 42.33% of the proposed distribution will be non-assessable. Therefore, CGT event E4 will happen to each CIF unit as a result of the capital distribution by CIF.

48. The time of the CGT event is just before the end of the income year in which the Trustee makes the payment (subsection 104-70(3)).

49. A CIF unitholder will make a capital gain when CGT event E4 happens to the extent (if any) that the sum of the non-assessable part of the payment made by the trustee during the income year in respect of a CIF unit exceeds the cost base of the unit (subsection 104-70(4)).

50. Where a CIF unitholder makes a capital gain when CGT event E4 happens, the cost base and reduced cost base of the CIF unit are reduced to nil (subsection 104-70(5)).

51. However, if the sum of all the non-assessable parts of payments made by the trustee during the income year is less than or equal to the cost base of the CIF unit, the cost base and reduced cost base of that CIF unit will be reduced (but not below nil) by the non-assessable payments (subsection 104-70(6)).

RFM Poultry Units

52. Subsections 110-25(2) and 110-55(2) state that the first element of the cost base and reduced cost base of a CGT asset is the total of any money paid, or required to be paid, and the market value of any other property given or required to be given in respect of acquiring the asset.

53. Accordingly, the first element of the cost base and reduced cost base of each newly acquired RFMP unit by CIF unitholders will be the amount applied by CIF on behalf of its unitholders to subscribe for each RFMP unit.

Scrip for scrip roll-over

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

55. 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.

56. 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 unitholders 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.

57. The scheme satisfies the requirements for the roll-over under Subdivision 124-M. Further, the scheme raises no novel issues of tax law interpretation and no further explanation of the application of those tax laws beyond that contained in the Ruling part of this document is necessary.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- arrangement
- capital proceeds
- CGT events
- CGT event E4 – Capital payment for trust interest
- scrip for scrip roll-over
- unit trusts

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 102M
- ITAA 1936 102T
- ITAA 1936 Sch 2F 272-5
- ITAA 1936 Sch 2F 272-65
- ITAA 1997 6-5
- ITAA 1997 6-10
- ITAA 1997 103-5
- ITAA 1997 104-70
- ITAA 1997 110-25
- ITAA 1997 124-781
- ITAA 1997 124-785
- ITAA 1997 124-795
- ITAA 1997 995-1
- TAA 1953
- Copyright Act 1968
- Corporations Act 2001 Ch 5C
- Corporations Act 2001 601FC(1)
- Corporations Act 2001 601GC(1)

Other references:

- Law Administrative Practice Statement PS LA 2008/10

ATO references

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