



Class Ruling

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

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① 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 the Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Subdivision 115-A of the ITAA 1997;
- Division 116 of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997;
- section 703-50 of the ITAA 1997;
- Subdivision 713-C of the ITAA 1997;
- subsection 102R(1) of the ITAA 1936;

- section 102T of the ITAA 1936;
- subsection 102P(1) of the ITAA 1936;
- subsection 102N(1) of the ITAA 1936; and
- subsection 102J(1) of the ITAA 1936.

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 Australian Wine Fund (AWF) 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 the AWF under the scheme to which the Ruling relates;
- held their Interests in the AWF 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 the RFM Chicken Income Fund (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 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 22 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 AWF.

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

11. The AWF was established by Deed dated 1 February 2002.

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

13. The AWF 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

14. 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.

15. The first stage of the proposed Revaluation is the renaming of RBK to RFF.
16. The second and third stages involve the establishment of a new fund called RFMP which will be owned by unitholders of CIF and the proposed merger between CIF and RFF by way of RFF acquiring all of the units in CIF by way of scrip for scrip.
17. The fourth stage is the proposed acquisition of AWF units by RFF and the exchange of units in AWF by AWF unitholders for units in RFF.
18. Following these mergers, it is proposed to list RFF on the ASX.
19. This class ruling considers certain tax implications in relation to the acquisition of AWF units by RFF in exchange for RFF units.
20. This class ruling does not consider the tax implications of the merger of CIF and RFF or the establishment of RFMP and the issue of units to CIF unitholders.

Other matters

21. AWF is a public trading trust under section 102R of the ITAA 1936 for the income year ended 30 June 2014.
22. AWF is the head entity of a tax consolidated group from 1 July 2012.

Ruling

CGT event A1

23. The disposal of a unit in AWF will result in CGT event A1 happening to the AWF unitholders in respect of each of their AWF units (section 104-10).
24. The time of the event is when the AWF units are transferred to RFF (paragraph 104-10(3)(b)).
25. An AWF unitholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an AWF unit exceeds its cost base. The capital gain is the amount of the excess (subsection 104-10(4)).
26. An AWF unitholder will make a capital loss if the capital proceeds from the disposal of an AWF unit are less than its reduced cost base. The capital loss is the amount of the difference (subsection 104-10(4)).
27. The capital proceeds from the disposal of each AWF unit is so much of the total market value of the RFF units received (worked out at the time that the CGT event happens) as is reasonably attributable to the disposal of the AWF unit (paragraph 116-20 and 116-40).

28. In working out the market value of the RFF units received that is reasonably attributable to the disposal of each AWF unit, the Commissioner accepts the following formula:

$$\begin{array}{ccc} \text{Market Value} & & \text{Total number of RFF units received} \\ \text{of RFF units} & \times & \hline & & \text{Total number of AWF units exchanged} \\ & & \text{for RFF units} \end{array}$$

29. RFM will advise AWF unitholders of the amount which, in RFM's opinion, is the market value of an RFF unit at the time of the CGT event.

Scrip for scrip roll-over

30. An AWF unitholder who makes a capital gain from the disposal of an AWF unit is not eligible to choose scrip for scrip roll-over as AWF is part of a consolidated group under section 703-50. (Subdivision 124-M).

CGT discount

31. An AWF unitholder who makes a capital gain will be eligible to treat the gain as a discount capital gain providing they acquired the AWF unit at least 12 months before the disposal and the other requirements of Subdivision 115-A are satisfied (section 115-25).

Commissioner of Taxation**6 November 2013**

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.*

CGT event A1

32. The ruling section provides a detailed explanation of the Commissioner's decision. Therefore, no further explanation in relation to CGT event A1 is warranted.

Scrip for scrip roll-over

33. The 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 exchange.

34. A threshold requirement is that a share in a company is exchanged for a share in another company (subparagraph 124-780(1)(a)(i)) or a unit in a trust is exchanged for a unit in another trust (subparagraph 124-781(1)(a)(i)).

35. AWF is part of a consolidated group under section 703-50. One effect of this choice is that subsection 713-135(1) causes the units in the AWF to be taken to be shares in a company for the purpose of applying the Income Tax Assessment Act 1997.

36. As RFF is a unit trust and the proposed exchange will be for units (treated as shares) in AWF for units in RFF, the requirement in either subparagraph 124-780(1)(a)(i) or subparagraph 124-781(1)(a)(i) will not be satisfied.

37. The proposed scheme therefore does not satisfy the requirements for roll-over relief under Subdivision 124-M.

Appendix 2 – Detailed contents list

38. 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:

- arrangement
- CGT event A1 – Disposal of a CGT asset
- scrip for scrip roll-over
- unit trusts

Legislative references:

- ITAA 1997 104-10

- ITAA 1997 124-780(1)(a)(i)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 703-50
- ITAA 1997 Subdiv 713-C
- ITAA 1936 102T
- ITAA 1936 102R
- ITAA 1936 102P(1)
- ITAA 1936 102N(1)
- ITAA 1936 102J(1)
- Copyright Act 1968
- Corporations Act 2001 Ch 5C

Other references:

- ATO ID 2003/197

ATO references

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