



Class Ruling

Income tax: Sydney Airport Trust 2 – interposing a new head company

Contents Para

**LEGALLY BINDING
SECTION:**

What this Ruling is about 1

Date of effect 7

Previous Rulings 8

Scheme 9

Ruling 23

**NOT LEGALLY BINDING
SECTION:**

Appendix 1:

Explanation 39

Appendix 2:

Detailed contents list 50

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, 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 45B of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45C of the ITAA 1936;
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Division 109 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- Subdivision 124-A of the ITAA 1997; and
- Subdivision 124-G of the ITAA 1997.

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

Class of entities

3. The class of entities to whom this Class Ruling applies consists of the holders of ordinary units in Sydney Airport Trust 2 (SAT2) who:

- participate in the trust scheme so that they exchange their units in SAT2 for ordinary shares in Sydney Airport Limited (SAL);
- are residents of Australia (as that term is defined in subsection 6(1) of the ITAA 1936) at the time they dispose of their units in SAT2;
- are not temporary residents of Australia (as that term is defined in subsection 995-1(1));
- hold their units in SAT2 either on capital account, as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)); and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their SAT2 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 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 to the income year 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).

Previous Rulings

8. Class Ruling CR 2011/100: Income tax: scrip for scrip: exchange of shares in MAp Airports International Limited for units in MAp Airports Trust 2 and cash consideration.

Scheme

9. 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:

- Class Ruling application dated 24 October 2013
- Explanatory Memorandum from Sydney Airport dated 25 October 2013 to Sydney Airport stapled security holders concerning the restructure proposal
- correspondence received in relation to the Class Ruling application.

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

10. Sydney Airport is a stapled security that is listed on the Australian Securities Exchange (ASX).

11. Before the implementation of the scheme that is the subject of this Ruling, the stapled security consisted of a unit in Sydney Airport Trust 1 (SAT1) stapled to a unit in Sydney Airport Trust 2 (SAT2).

12. SAT1 is an Australian resident unit trust taxed under Division 6 of Part III of the ITAA 1936.

13. SAT2 is an Australian resident public trading trust which is taxed under Division 6C of Part III of the ITAA 1936. SAT2 had previously made a choice, under section 713-130 of the ITAA 1997, to form an income tax consolidated group with itself as the head company. Generally, for income tax purposes, SAT2 was treated as if it were a company.

14. Before the implementation of the scheme that is the subject of this Ruling, SAT1 and SAT2 owned, directly and indirectly, 100% of the stapled securities (consisting of ordinary shares and redeemable preference shares) in Southern Cross Airports Corporation Holdings Ltd (SCACH).

15. SCACH operates the Kingsford Smith Airport in Sydney. Before the implementation of the scheme that is the subject of this Ruling, SCACH was the head company of an income tax consolidated group.

16. Under the scheme that is the subject of this Ruling, SAT2 interposed a new company, Sydney Airport Limited (SAL) between itself and the holders of units in SAT2.

17. The reorganisation of SAT2 was part of a broader restructure of the Sydney Airport group, involving the take-out of minority interests and a simplification of the structure of the group.

18. The reorganisation of SAT2 broadly included the following steps:

- the stapling deed between SAT1 and SAT2 was terminated;
- SAT2 unit holders voted at an extraordinary general meeting on 22 November 2013 to approve various resolutions to implement what is commonly known as a trust scheme. These resolutions included an approval pursuant to item 7 of the table in section 611 of the *Corporations Act 2001*, and approving amendments to the constitution of SAT2;
- As a result of these resolutions, on the Implementation Date (3 December 2013) all of the units in SAT2 were transferred by SAT2 unit holders in exchange for shares in SAL. SAL became the owner of all of the units in SAT2;
- SAL shares and SAT1 units were stapled under a new stapling deed and listed on the ASX;
- SAL acquired from SAT1 the portion of the shares in SCACH that it did not already own; and
- SAT1 acquired 100% of the units in SAT2 from SAL for nominal market value.

19. SAL was incorporated with nominal equity on 30 July 2013 for the purposes of the trust scheme.

Other matters

20. SAT2 unit holders acquired all of their SAT2 units after 19 September 1985.

21. SAT2's contributed capital, which was deemed by sections 713-135 and 713-140 to be a share capital account (as defined in section 975-300), was not tainted (within the meaning of Division 197) at the time of the implementation of the scheme that is the subject of this Ruling, as no amounts had been transferred to the deemed share capital account from any of its other accounts.

22. SAL makes the required choice pursuant to subsection 124-380(5), within the time prescribed by subsection 124-380(7), that the SAT2 income tax consolidated group is to continue in existence at and after the 'completion time' (as defined in subsection 124-365(1)).

Ruling

CGT event A1 happened when SAT2 unit holders disposed of their units in exchange for SAL shares

23. CGT event A1 in section 104-10 happened when SAT2 unit holders disposed of their units in SAT2 in exchange for shares in SAL on the Implementation Date of the trust scheme.

Eligibility to choose CGT roll-over under Subdivision 124-G

24. At the time of the implementation of the scheme that is the subject of this Ruling, SAT2 was an Australian resident public trading trust which was taxed under Division 6C of Part III of the ITAA 1936. SAT2 had made a choice, under section 713-130, to form an income tax consolidated group with itself as the head company. Generally, for income tax purposes, SAT2 was treated as if it were a company.

25. This meant that the holders of units in SAT2 (which is a trust under the general law) were taken to own shares in SAT2 (which was taken to be a company).

26. The unit holders of SAT2 are eligible to choose CGT roll-over under Subdivision 124-G because of the disposal of SAT2 units in exchange for SAL shares.

Consequences for SAT2 unit holders who choose CGT roll-over under Subdivision 124-G

27. All of the unit holders of SAT2 who belong to the class of entities to which this Ruling applies are taken to have chosen to obtain the CGT roll-over under Subdivision 124-G because of subsection 124-360(2). The following consequences will apply.

SAT2 unit holders who did not hold their units as trading stock or revenue assets

28. Any capital gain or capital loss that is made by a SAT2 unit holder from CGT event A1 happening because of the disposal of SAT2 units in exchange for SAL shares is disregarded (subsection 124-15(2)).

29. The first element of the cost base and reduced cost base of each SAL share acquired by a SAT2 unit holder because of the disposal of a SAT2 unit is equal to the cost base and reduced cost base of the corresponding SAT2 unit (subsection 124-15(3)).

30. For the purposes of applying the discount capital gain provisions in Subdivision 115-A to a subsequent CGT event happening to a SAL share, a SAT2 unit holder will be taken to have acquired their SAL shares on the date that they acquired their original SAT2 units (item 2 of the table in subsection 115-30(1)). For those SAT2 unit holders who acquired SAT2 units in exchange for shares they formerly owned in MAp Airports International Limited (MAIL), and who chose scrip for scrip roll-over under Subdivision 124-M in respect of that exchange (see Class Ruling 2011/100), those SAT2 units will be taken to have been acquired by the SAT2 unit holder on the date they had acquired their MAIL shares (paragraph (b) of item 2 of the table in subsection 115-30(1)). For the avoidance of doubt SAT2 was formerly known as MAT2 (MAp Airports Trust 2).

31. For all other CGT purposes, a SAT2 unit holder will be taken to have acquired their SAL shares at the time when the shares are issued to them (item 2 of the table in section 109-10). This will be on the Implementation Date (3 December 2013).

SAT2 unit holders who held their units as trading stock or revenue assets

32. All of the unit holders of SAT2 who belong to the class of entities to which this Ruling applies are taken to have chosen to obtain the CGT roll-over under Subdivision 124-G because of subsection 124-360(2). If, immediately before a SAT2 unit holder disposed of their units in SAT2, some or all of them were held as the unit holder's trading stock or revenue assets, the additional consequences in section 124-390 will apply to those units, as follows.

Trading stock

33. Under subsection 124-390(2), the amount included in a unit holder's assessable income because of the disposal of each of their units in SAT2 that was their trading stock at that time is equal to:

- (a) if the unit has been their trading stock ever since the start of the income year in which that time occurs - the total of:
 - (i) its *value as trading stock at the start of the income year; and

(ii) the amount (if any) by which its cost has increased since the start of the income year; or

(b) otherwise - its cost at that time.

34. For each of the shares in SAL that a SAT2 unit holder acquired in return for those of their units in SAT2 that were their trading stock at that time, they are taken to have paid:

Total of the amounts included in their assessable income
under subsection 124-390(2) for those units in SAT2
Number of those shares in SAL

35. The amount worked out under this formula becomes the cost of each of those shares in SAL.

Revenue assets

36. Under subsection 124-390(4), for each of a unit holder's units in SAT2 that was a revenue asset at that time, their assessable income includes the total of the amounts that (apart from subsection 124-390(4)) would be subtracted from the gross disposal proceeds in calculating any profit or loss on their disposing of that SAT2 unit at that time.

37. For each of the shares in SAL that a SAT2 unit holder acquired in return for those of their units in SAT2 that were revenue assets at that time, they are taken to have paid:

Total of the amounts included in their assessable income
under subsection 124-390(4) for those units in SAT2
Number of those shares in SAL

The application of section 45B of the ITAA 1936

38. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the capital benefit provided to the SAT2 unit holders under the trust scheme. Accordingly, no part of the capital benefit will be taken to be a dividend for income tax purposes.

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 following explains the Commissioner's decision in relation to section 45B of the ITAA 1936.

Section 45B of the ITAA 1936 - schemes to provide capital benefits

40. Section 45B of the ITAA 1936 is an anti-avoidance provision which, if applicable, allows the Commissioner to make a determination that all or part of a return of capital to be received by shareholders is to be treated as an unfranked dividend.

41. The purpose of section 45B of the ITAA 1936 is to ensure that the relevant amounts distributed to shareholders are treated as dividends for tax purposes if certain payments, allocations and distributions are made in substitution for dividends. Specifically, the provision applies where:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company (paragraph 45B(2)(a));
- (b) under the scheme a taxpayer (the relevant taxpayer), who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)); and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose, (other than an incidental purpose) of enabling the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

42. The arrangement involving the disposal of units in SAT2 for shares in SAL under the trust scheme constitutes a scheme for the purposes of section 45B of the ITAA 1936.

43. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) of the ITAA 1936 and includes the provision of ownership interests in a company to a person, or the distribution to a person of share capital.

44. The issue by SAL of shares in itself means that SAT2 unit holders are taken to have been provided with a capital benefit.

45. For the purposes of paragraph 45B(2)(b) of the ITAA 1936, a relevant taxpayer 'obtains a tax benefit' as defined in subsection 45B(9) of the ITAA 1936 if:

- the amount of tax payable; or

- any other amount payable under the ITAA 1936 or the ITAA 1997;

by the relevant taxpayer would, apart from the operation of section 45B of the ITAA 1936:

- be less than the amount that would have been payable, or
- be payable at a later time than it would have been payable,

if the capital benefit had instead been an assessable dividend.

46. The issue by SAL of shares in itself to SAT2 unit holders is a capital benefit. If it had been an assessable dividend rather than a capital benefit, it is likely that a SAT2 unit holder would incur a greater tax liability. The issue of shares as consideration for the acquisition of other (actual or deemed) shares would ordinarily be subject to the CGT provisions of the income tax law. It is only to the extent (if any) that the market value of the shares received as consideration exceed the cost base of the acquired shares that a capital gain will be made. By contrast, an assessable dividend will be included in the assessable income of a resident shareholder, or in the case of a foreign resident, will be subject to dividend withholding tax under section 128B of the ITAA 1936. Therefore, the relevant taxpayers (SAT2 unit holders) will obtain a tax benefit under the scheme.

47. For the purposes of paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the relevant circumstances (as outlined in subsection 45B(8) of the ITAA 1936) of the scheme to determine whether it would be concluded that the persons who entered into or carried out the scheme or any part of the scheme did so for a purpose (other than an incidental purpose) of enabling the relevant taxpayers (SAT2 unit holders) to obtain a tax benefit.

48. On the basis of the information surrounding the disposal of units in SAT2 for shares in SAL as described in the Class Ruling application and further information, it cannot be concluded that the scheme was entered into for a more than incidental purpose of enabling the relevant taxpayers to obtain a tax benefit.

49. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to SAT2 unit holders under the trust scheme.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Previous Rulings	8
Scheme	9
Other matters	20
Ruling	23
CGT event A1 happened when SAT2 unit holders disposed of their units in exchange for SAL shares	23
Eligibility to choose CGT roll-over under Subdivision 124-G	24
Consequences for SAT2 unit holders who choose CGT roll-over under Subdivision 124-G	27
<i>SAT2 unit holders who did <u>not</u> hold their units as trading stock or revenue assets</i>	28
<i>SAT2 unit holders who held their units as trading stock or revenue assets</i>	32
<i>Trading stock</i>	33
<i>Revenue assets</i>	36
The application of section 45B of the ITAA 1936	38
Appendix 1 – Explanation	39
Section 45B of the ITAA 1936 - schemes to provide capital benefits	40
Appendix 2 – Detailed contents list	50

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; CR 2011/100

Subject references:

- capital benefit
- capital gains
- capital return
- cost base adjustments
- distributions
- share capital
- stapled securities
- trusts

Legislative references:

- ITAA 1936 45B
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(5)

- ITAA 1936 45B(8)
- ITAA 1936 45B(9)
- ITAA 1936 45C
- ITAA 1997 104-10
- ITAA 1997 109-10
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 124-15(2)
- ITAA 1997 124-15(3)
- ITAA 1997 Subdiv 124-G
- ITAA 1997 124-360(2)
- ITAA 1997 124-390
- ITAA 1997 124-390(2)
- ITAA 1997 124-390(4)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 713-130
- ITAA 1997 713-135
- ITAA 1997 713-140
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Copyright Act 1968
- Corporations Act 2001 256C

ATO references

NO:	1-53KVENG
ISSN:	1445-2014
ATOlaw topic:	Income Tax ~~ Capital Gains Tax ~~ roll-overs - other

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).