



Class Ruling

Income tax: scrip for scrip roll-over: acquisition of units in Folkestone Social Infrastructure Trust by Folkestone Education Trust

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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:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 102-10 of the ITAA 1997
 - section 104-10 of the ITAA 1997
 - section 104-70 of the ITAA 1997
 - section 109-10 of the ITAA 1997
 - Division 110 of the ITAA 1997

- Subdivision 115-A of the ITAA 1997
- section 116-20 of the ITAA 1997
- Subdivision 124-M of the ITAA 1997
- Division 230 of the ITAA 1997
- section 977-50 of the ITAA 1997, and
- subsection 995-1(1) 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 are the holders of units in the Folkestone Social Infrastructure Trust (FST) who:

- (a) participate in the scheme that is the subject of this Ruling
- (b) are 'residents of Australia' as defined in subsection 6(1) of the ITAA 1936
- (c) hold units in FST on the Record Date and the Implementation Date for the scheme that is the subject of this Ruling
- (d) are not an Ineligible Overseas Investor (Foreign Unitholder)
- (e) do not hold their units in FST either as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) – that is, the unit holders hold their units broadly on capital account, and
- (f) are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their units in FST.

(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 8 to 29 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 19 December 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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 and on the following documents:

- Class Ruling application dated 9 December 2014
- the Consolidated Constitution of FST
- the draft Supplemental Deed to modify the Constitution of FST
- the Constitution of Folkestone Education Trust (FET) as of 9 September 2014
- the Merger Implementation Deed dated 13 November 2014
- the Notice of Meeting and Explanatory Memorandum for FST dated 24 November 2014, and
- 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.

FST and FET

9. FST was settled on 21 September 2000 and listed on the Australian Securities Exchange (ASX) on 25 February 2011. As at 31 July 2014, FST had 28,449,729 units on issue. These units were held by 1,338 unit holders.
10. FET was settled on 8 July 2002 and listed on the ASX on 22 May 2003. As at 31 July 2014, FET had 205,069,661 units on issue. These units were held by 3,478 unit holders.
11. FST and FET did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of section 124-783 of the ITAA 1997
12. Both FST and FET are managed investment schemes that are registered under Chapter 5C of the *Corporations Act 2001*.
13. Neither FST nor FET is a corporate unit trust pursuant to Division 6B of Part III of the ITAA 1936, or a public trading trust pursuant to Division 6C of Part III of the ITAA 1936.
14. Folkestone Real Estate Management Limited (FREML) is the Responsible Entity (RE) of FST, and Folkestone Investment Management Limited (FIML) is the RE of FET.
15. Both FST and FET have only one class of fully paid units on issue. Each unit carries the same rights to the income and capital of FST and FET (respectively).

The Merger Scheme (Scheme)

16. FREML (in its capacity as the RE of FST) entered into a Merger Implementation Deed dated 13 November 2014 with FIML (in its capacity as the RE of FET), in relation to the acquisition of all the units in FST by FIML (in its capacity as the RE of FET).
17. A Notice of Meeting and Explanatory Memorandum was issued to the unit holders of FST by FREML (in its capacity as the RE of FST) on 24 November 2014.
18. On 19 December 2014 (the Effective Date), a meeting of the unit holders of FST was held in relation to the proposed acquisition of all the units in FST by FIML (in its capacity as the RE of FET).
19. On the Effective Date, the unit holders of FST passed:
 - an ordinary resolution to approve the acquisition by FIML (in its capacity as the RE of FET) of all the units in FST for the purposes of item 7 of the table in section 611 of the *Corporations Act 2001*, and
 - a special resolution to amend the constitution of FST so as to allow FREML (in its capacity as the RE of FST) to take the steps necessary to implement the Scheme.

20. Under the Scheme, FREML (in its capacity as the RE of FST) paid a \$0.675 special cash distribution (the Implementation Distribution) to the unit holders of FST for each FST unit held on the Record Date.

21. After the Scheme was approved by the unit holders of FST, FREML (in its capacity as the RE of FST) disposed of FST's non-core assets for market value consideration of \$31.5 million.

22. The last day of trading of the units in FST on the ASX was 22 December 2014. Dealings in FST units were restricted under the Scheme after 31 December 2014 (the Record Date).

23. The proceeds of the sale of some of the non-core assets, existing cash reserves and/or undrawn debt were used by FREML (in its capacity as the RE of FST) to pay the Implementation Distribution of \$0.675 cash per FST unit to each unit holder who held FST units on the Record Date. The Implementation Distribution was paid on 6 January 2015 (the Implementation Date).

24. The Implementation Distribution was treated as a distribution of capital in the accounts of FST.

25. On the Implementation Date, each unit holder who held FST units on the Record Date (other than Foreign Unitholders) exchanged their units for the Scheme Consideration, being 1.32 FET units for every 1 unit in FST.

26. Any fractional entitlement to a FET unit which arose from the calculation of the Scheme Consideration in respect of a unit holder was rounded down to the nearest whole number of FET units.

27. Any entitlement that a Foreign Unitholder holding FST units would otherwise have had to be issued FET units under the Scheme were satisfied by FREML (in its capacity as the RE of FST) procuring FIML (in its capacity as the RE of FET) to issue such FET units, on the Implementation Date, to the Sale Nominee. Not more than 15 Business Days after the Implementation Date, the FET units held by the Sale Nominee will be sold by the Sale Nominee in such manner, and at such price and on such other terms as the Sale Nominee determines in good faith and at the risk of the Foreign Unitholders. Not more than 25 Business Days after the Implementation Date, the Sale Nominee will remit to the Foreign Unitholders the net cash proceeds of the sale of the FET units (after deducting any brokerage, stamp duties and other selling costs).

28. The new FET units commenced trading on a deferred settlement basis on the ASX on 29 December 2014. The new FET units commenced trading on a normal settlement basis on the ASX on 7 January 2014.

29. FIML (in its capacity as the RE of FET) did not make a choice under subsection 124-795(4) to the effect that the unit holders of FST cannot obtain scrip for scrip roll-over under Subdivision 124-M for the CGT event happening in relation to their units.

Ruling

CGT event E4 happens on the payment of the Implementation Distribution

30. CGT event E4 (section 104-70) happened when FREML (in its capacity as the RE of FST) paid the Implementation Distribution of \$0.675 to a FST unit holder in respect of each of their FST units. None of the payment will be included in the FST unit holder's assessable income.

31. As CGT event A1 will happen in relation to the FST units after FREML (in its capacity as the RE of FST) pays the Implementation Distribution (which causes CGT event E4 to happen), but before the end of the income year in which the FST units are disposed of, the time of CGT event E4 is on the Implementation Date, just before the time of CGT event A1 (paragraph 104-70(3)(b)).

32. A unit holder of FST will make a capital gain if the total of the amounts of the non-assessable payments made by FREML (in its capacity as the RE of FST) during the income year (including the Implementation Distribution) in respect of a FST unit exceeds the cost base of the FST unit. No capital loss can be made from CGT event E4 (subsection 104-70(4)).

33. If a FST unit holder makes a capital gain from CGT event E4, the cost base and reduced cost base of the FST unit is reduced to nil (subsection 104-70(5)).

34. However, if the total of the amounts of the non-assessable payments made by FREML (in its capacity as the RE of FST) during the income year (including the Implementation Distribution) in respect of a FST unit is not more than the cost base of the FST unit, the cost base and reduced cost base of the FST Unit are reduced by that total amount (subsection 104-70(6)).

35. Accordingly, the cost base and reduced cost base of each FST unit, which may have been adjusted by previous non-assessable payments in the same or earlier income years, will be reduced (but not below nil) by \$0.675. A FST unit holder whose cost base for the FST unit is less than \$0.675 will make a capital gain to the extent of the difference.

CGT event A1 happens on the disposal of FST units

36. CGT event A1 happened when the unit holders of FST disposed of their FST units to FIML (in its capacity as the RE of FET) (section 104-10).

37. The time of CGT event A1 is on the Implementation Date (6 January 2015) (paragraph 104-10(3)(b)).

38. A FST unit holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a FST unit exceeded the cost base of that unit (subsection 104-10(4)).

39. A FST unit holder made a capital loss if the capital proceeds from the disposal of a FST unit was less than the reduced cost base of that unit (subsection 104-10(4)).

40. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening is the market value of the property (units in FET) that a FST unit holder received, or was entitled to receive, in respect of the disposal of the FST units. The market value of the FET units is worked out as at the time of CGT event A1, which was on the Implementation Date.

Availability of scrip for scrip roll-over if a capital gain is made

41. Subject to the qualification in the following paragraph, a FST unit holder who made a capital gain from the disposal of their FST unit to FIML (in its capacity as the RE of FET) is eligible to choose scrip for scrip roll-over (section 124-781 and section 124-785).

42. Scrip for scrip roll-over cannot be chosen if any capital gain a FST unit holder might make from their replacement FET units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

43. The only capital proceeds received by a FST unit holder were the units in FET. Therefore, if a FST unit holder chooses scrip for scrip roll-over, the capital gain they made upon the disposal of a FST unit to FIML (in its capacity as the RE of FET) is disregarded (subsection 124-785(1)).

Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen

44. A FST unit holder who does not choose roll-over, or cannot choose roll-over, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their FST units in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

45. A FST unit holder, who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the FST units must have been acquired by the FST unit holder at least 12 months before their disposal to FIML (in its capacity as the RE of FET) (section 115-25).

Cost base and reduced cost base of FET units received

46. The method for calculating the cost base of the FET units received for the disposal of FST units depends on whether scrip for scrip roll-over is chosen. In either case, the cost base and reduced cost base of the FET units must first be reduced in the manner described in paragraphs 34 and 35 because of CGT event E4 happening when FREML (in its capacity as the RE of FST) made a payment to the unit holders of FST (being the Implementation Distribution) in respect of their units in FST.

Scrip for scrip roll-over is chosen

47. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each replacement FET unit received is calculated by reasonably attributing to it the cost base and reduced cost base of the part of the FST unit for which it was exchanged (subsections 124-785(2) and 124-785(4)).

48. The unit holders of FST can calculate the first element of the cost base and reduced cost base of each replacement FET unit by dividing the aggregate cost bases of their FST units by the number of replacement FET units received.

Scrip for scrip roll-over is not chosen

49. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the cost base and reduced cost base of each replacement FET unit received is equal to the market value of the part of the FST unit given in respect of acquiring each FET unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

Acquisition date of FET units

50. The unit holders of FST acquired their FET units on the date when FIML (in its capacity as the RE of FET) issued the FET units to them (item 3 of the table in section 109-10), being the Implementation Date (6 January 2015).

51. For the purposes of determining if a capital gain on a subsequent disposal of their FET units is eligible to be a discount capital gain, FST unit holders who choose scrip for scrip roll-over are taken to have acquired their FET units on the date when they acquired (for CGT purposes) the corresponding FST units (item 2 of the table in subsection 115-30(1)).

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.*

52. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

Scrip for scrip roll-over

53. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables the holder of a unit or other interest in a trust to disregard a capital gain from a unit or other interest that is disposed of if the holder receives a replacement interest in another trust in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

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

- (a) units or other interests in a trust are exchanged for units or other interests in another trust
- (b) entities have fixed entitlements to all of the income and capital of the original trust and the acquiring trust
- (c) the exchange is in consequence of an arrangement
- (d) conditions for the roll-over are satisfied
- (e) further conditions, if applicable, are satisfied, and
- (f) exceptions to obtaining scrip for scrip roll-over are not applicable.

55. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 8 of this Ruling, and
- (b) all the facts comprising the scheme as described in this Ruling,

it is considered that, for the purposes of paragraph 124-781(1)(b), there are fixed entitlements to all of the income and capital of FST and FET immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

56. The scheme satisfies the requirements for the roll-over under Subdivision 124-M.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- acquisition dates
- acquisition of securities
- acquisition of unit trust units
- arrangement
- capital benefit
- capital gains
- capital gains tax
- CGT assets
- CGT capital proceeds
- CGT choice
- CGT cost base
- CGT event A1 – disposal of a CGT asset
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- exchange of unit trust units
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- unit trust distributions
- unit trusts
- unit trusts units

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 Pt III Div 6B
 - ITAA 1936 Pt III Div 6C
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-70
 - ITAA 1997 104-70(3)(b)
 - ITAA 1997 104-70(4)
 - ITAA 1997 104-70(5)
 - ITAA 1997 104-70(6)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-781
 - ITAA 1997 124-783
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
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 - Corporations Act 2001 Ch 5C
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ATO references

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Income tax ~~ Capital gains tax ~~ cost base and reduced cost base
Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip

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