



Class Ruling

Income tax: scrip for scrip roll-over: exchange of units in several trusts for units in the Aventus Retail Property Fund

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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:

- 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 109-10 of the ITAA 1997
- section 110-25 of the ITAA 1997
- section 110-55 of the ITAA 1997
- section 112-30 of the ITAA 1997
- Subdivision 115-A of the ITAA 1997

- Subdivision 115-B of the ITAA 1997
- section 116-20 of the ITAA 1997, and
- Subdivision 124-M 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 BBJ Thompsons Road Unit Trust, BBRC Belrose Fund, BBRC Diversified Retail Fund, BBRC Jindalee Fund, BBRC Midland Fund, BBRC Mile End Fund, Caringbah Unit Trust, Mile End Trust and Peninsula Unit Trust (collectively, the Acquired Trusts) who:

- (a) participated in the scheme that is the subject of this Ruling
- (b) are either:
 - (i) a 'resident of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) and under the scheme that is the subject of this Ruling received units in the Aventus Retail Property Fund (Aventus Trust) in exchange for their units in the Acquired Trusts, or
 - (ii) a 'foreign resident' as that term is defined in subsection 995-1(1), whose respective units in the Acquired Trusts are 'taxable Australian property' (as that term is defined in section 855-15) and, under the scheme that is the subject of this Ruling, received units in the Aventus Trust that, just after the acquisition of those units, are 'taxable Australian property', in exchange for their units in the Acquired Trusts
- (c) did not hold their respective units in the Acquired Trusts as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, the holders held their units, broadly, on capital account
- (d) acquired their respective units in the Acquired Trusts on or after 20 September 1985, and
- (e) are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their units in the Acquired Trusts.

Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.

In this Ruling, an entity belonging to this class of entities is referred to as an 'Eligible Acquired Trust Unitholder'.

4. Where an entity is a holder of units in more than one of the Acquired Trusts listed in paragraph 3, this Ruling applies to the holding of units in each trust separately.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. 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 10 to 29 of this Ruling.

7. 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

8. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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. The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application dated 8 September 2015
- draft Product Disclosure Statement for the Aventus Trust provided on 17 August 2015, and
- correspondence from the applicant providing further particulars.

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

Aventus Trust

10. The Aventus Trust was settled on 28 July 2015 and was listed on the Australian Securities Exchange (ASX) on 16 October 2015. The Aventus Trust is a 'resident trust estate' as defined in subsection 95(2) of the ITAA 1936.

11. The Aventus Trust is a unit trust that is a registered managed investment scheme for the purposes of Chapter 5C of the *Corporations Act 2001* (Corporations Act).

12. The Responsible Entity (RE) of the Aventus Trust is One Managed Investment Funds Limited. Prior to One Managed Investment Funds Limited being appointed RE, the trustee of the Aventus Trust was Aventus Capital Limited.

The Acquired Trusts

13. Immediately before the implementation of the scheme that is the subject of this Ruling, each of the Acquired Trusts was an unlisted unit trust, and was not a registered managed investment scheme for the purposes of Chapter 5C of the Corporations Act.

14. Each of the Acquired Trusts is a 'resident trust estate' as defined in subsection 95(2) of the ITAA 1936.

The acquisition of units in each of the Acquired Trusts

15. The scheme that is the subject of this Ruling involved, broadly, the acquisition of all of the units in each of the Acquired Trusts by the trustee of the Aventus Trust.

16. The acquisition of units in each of the Acquired Trusts by the trustee of the Aventus Trust constituted a separate arrangement for the purposes of applying Subdivision 124-M.

17. At the time of the acquisition of units in each of the Acquired Trusts by the trustee of the Aventus Trust, the Acquired Trusts only had one class of units, being ordinary units, on issue.

18. In preparation for the acquisition, the trust deeds of the Acquired Trusts (other than the Mile End Trust and the BBJ Thompsons Road Unit Trust) were amended to give powers to the trustee of each trust to execute the documents on behalf of the unitholders to transfer all of the units in each trust to the trustee of the Aventus Trust. Further, the unitholders of the Acquired Trusts (other than the Mile End Trust and the BBJ Thompsons Road Unit Trust) passed a resolution approving the proposed acquisition. Pursuant to these powers, the trustee of each of those trusts executed transfer documents with the trustee of the Aventus Trust on 19 October 2015 to transfer the units in each trust, on behalf of the unitholders, upon the implementation of the scheme the subject of this Ruling.

19. The unitholders of the Mile End Trust entered into a Unit Acquisition Agreement on 1 September 2015 with the trustee of the Aventus Trust for their units in the Mile End Trust to be acquired by the trustee of the Aventus Trust.

20. The two unitholders of the BBJ Thompsons Road Unit Trust entered into Unit Acquisition Agreements on 24 August 2015 and 10 September 2015 (respectively) with the trustee of the Aventus Trust for their units in the BBJ Thompsons Road Unit Trust to be acquired by the trustee of the Aventus Trust.

21. As consideration for the disposal of their units, Eligible Acquired Trust Unitholders were offered cash by the trustee of the Aventus Trust, with the ability to elect to obtain, in place of cash, units in the Aventus Trust or a combination of both cash and units in the Aventus Trust.

22. Each of the units in the Acquired Trusts that were transferred to the trustee of the Aventus Trust and each of the units in the Aventus Trust that were issued in consideration for that transfer carry identical rights and obligations.

23. For each Acquired Trust, all of the unitholders of that Acquired Trust were offered equal consideration on a per unit basis. The cash offer for each unit in a particular Acquired Trust, as well as the scrip offer (being units in the Aventus Trust) for each unit in a particular Acquired Trust, was the same and based on the net asset value of the Acquired Trust.

24. The trustee of the Aventus Trust also offered units to selected investors using a combination of an Institutional Offer, a Priority Offer and a Broker Firm Offer (collectively, the Offer). No general public offer was made.

25. On the Offer Day, being 16 October 2015, units in the Aventus Trust were listed on the ASX on a conditional and deferred settlement basis.

26. On the business day after the Offer Day, being 19 October 2015, the acquisition of the units in the Acquired Trusts (other than the Mile End Trust and BBJ Thompsons Road Unit Trust) by the trustee of the Aventus Trust was completed and units in the Aventus Trust were issued to the Eligible Acquired Trust Unitholders who had elected scrip consideration.

27. On the second business day after the Offer date, being 20 October 2015:

- units in the Aventus Trust were allotted to the external investors that subscribed for units as part of the Offer
- the units in the Mile End Trust and BBJ Thompsons Road Unit Trust were acquired by the trustee of the Aventus Trust

- the trustee of the Aventus Trust issued scrip in the Aventus Trust to the unitholders in the Mile End Trust and BBJ Thompsons Road Unit Trust who had elected scrip consideration, and
- any Acquired Trust unitholders that did not choose to receive scrip consideration were paid cash for their units in the relevant Acquired Trusts.

Other matters

28. The trustee of the Aventus Trust did not make a choice under subsection 124-795(4) to the effect that the unitholders of any of the Acquired Trusts cannot obtain scrip for scrip roll-over for the CGT event happening in relation to their respective units.

Ruling

CGT event A1

29. CGT event A1 happened when the Eligible Acquired Trust Unitholders disposed of their respective units to the trustee of the Aventus Trust (section 104-10).

30. The time of CGT event A1 for the Eligible Acquired Trust Unitholders (other than the unitholders of the Mile End Trust and the BBJ Thompsons Road Unit Trust) was on 19 October 2015 (paragraph 104-10(3)(a)).

31. The time of CGT event A1 for the unitholders of the Mile End Trust was on the date that the unitholders entered into the Unit Acquisition Agreement with the trustee of the Aventus Trust for the disposal of their units in the Mile End Trust, being 1 September 2015 (paragraph 104-10(3)(a)).

32. The time of CGT event A1 for each of the two unitholders of the BBJ Thompsons Road Unit Trust was on the date that a unitholder entered into a Unit Acquisition Agreement with the trustee of the Aventus Trust for the disposal of their units in the BBJ Thompsons Road Unit Trust, being either 24 August 2015 or 10 September 2015 (paragraph 104-10(3)(a)).

33. An Eligible Acquired Trust Unitholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a unit in an Acquired Trust exceeded the cost base of that unit (subsection 104-10(4)).

34. An Eligible Acquired Trust Unitholder made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a unit in an Acquired Trust was less than the reduced cost base of that unit (subsection 104-10(4)).

35. The capital proceeds from CGT event A1 happening is the total of the money received and/or the market value of the property (units in the Aventus Trust) received, or entitled to be received, by an Eligible Acquired Trust Unitholder in respect of the disposal of their units in an Acquired Trust (subsection 116-20(1)). The market value of the Aventus Trust units is worked out as at the time of CGT event A1.

36. If a unit in an Acquired Trust that was disposed of by an Eligible Acquired Trust Unitholder to the trustee of the Aventus Trust was acquired by an Australian resident unitholder at least 12 months before the time of CGT event A1, a capital gain from CGT event A1 happening to that unit may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied. If an Eligible Acquired Trust Unitholder is a foreign resident, they must also satisfy the requirements in Subdivision 115-B to calculate the discount percentage for any discount capital gain they may make from CGT event A1 happening to a unit in an Acquired Trust.

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

37. Subject to the qualification in the following paragraph, an Eligible Acquired Trust Unitholder who made a capital gain from the disposal of their units in an Acquired Trust to the trustee of the Aventus Trust may choose to obtain scrip for scrip roll-over for that part of the capital gain that is referable to the receipt of units in the Aventus Trust (sections 124-781, 124-785 and 124-790).

38. Scrip for scrip roll-over cannot be chosen if any capital gain an Eligible Acquired Trust Unitholder might make from their replacement Aventus Trust units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

39. Each Eligible Acquired Trust Unitholder that is a significant stakeholder or a common stakeholder (as defined in section 124-783) must jointly choose to obtain the scrip for scrip roll-over with the trustee of the Aventus Trust (paragraph 124-781(3)(c)).

40. Each Eligible Acquired Trust Unitholder that is a significant stakeholder or a common stakeholder (as defined in section 124-783) must inform the trustee of the Aventus Trust in writing of the cost base of their units in an Acquired Trust as at the time just before CGT event A1 happened under the scheme that is the subject of this Ruling (paragraph 124-781(3)(d)).

Consequences if scrip for scrip roll-over is chosen

41. If the only capital proceeds received by an Eligible Acquired Trust Unitholder consists of units in the Aventus Trust, and if they choose scrip for scrip roll-over, the capital gain they made upon the disposal of a unit in an Acquired Trust to the trustee of the Aventus Trust is disregarded (subsection 124-785(1)).

42. If the capital proceeds received by an Eligible Acquired Trust Unitholder consists of both units in the Aventus Trust and cash, and if they choose scrip for scrip roll-over, that part of the capital gain that is referable to the receipt of Aventus Trust units is disregarded (subsections 124-785(1) and 124-790(1)). Any part of the capital gain that is referable to the receipt of cash is not disregarded because it is ineligible proceeds for which roll-over is not available (subsection 124-790(1)).

43. If an Eligible Acquired Trust Unitholder chooses scrip for scrip roll-over and receives units in the Aventus Trust, the acquisition date of the new Aventus Trust units for the purposes of making a discount capital gain is the date when they acquired the Acquired Trust units that were exchanged for the new Aventus Trust units (item 2 of the table in subsection 115-30(1)).

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

44. An Eligible Acquired Trust Unitholder 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 units in an Acquired Trust 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. An Eligible Acquired Trust Unitholder 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 units in the Acquired Trust that were disposed of to the trustee of the Aventus Trust must have been acquired by the unitholder at least 12 months before the time of CGT event A1. If an Eligible Acquired Trust Unitholder is a foreign resident, they must also satisfy the requirements in Subdivision 115-B to calculate the discount percentage for any discount capital gain they may make from CGT event A1 happening to a unit in an Acquired Trust.

46. An Eligible Acquired Trust Unitholder who does not choose roll-over, or cannot choose roll-over, will acquire their new Aventus Trust units on the date when the trustee of the Aventus Trust issues the units to them (item 3 of the table in section 109-10).

Cost base and reduced cost base of Aventus Trust units received

47. The method for calculating the cost base and reduced cost base of the Aventus Trust units acquired by an Eligible Acquired Trust Unitholder in exchange for their units in an Acquired Trust depends on whether scrip for scrip roll-over is chosen.

Scrip for scrip roll-over is chosen

48. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of a replacement Aventus Trust unit received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the unit in an Acquired Trust for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and 124-785(4)).

49. An Eligible Acquired Trust Unitholder who chooses to receive a combination of cash and new units in the Aventus Trust as consideration for the disposal of their units in an Acquired Trust will have to reduce the cost base and reduced cost base of their units in an Acquired Trust by so much of it that is attributable to the cash component of the consideration (subsection 124-785(3)).

50. An Eligible Acquired Trust Unitholder can calculate the first element of the cost base and reduced cost base of each replacement Aventus Trust unit by dividing the aggregate cost bases of their respective units in an Acquired Trust (as reduced under subsection 124-785(3) if necessary) by the number of replacement Aventus Trust units received (subsection 124-785(2)).

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

51. 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 Aventus Trust unit received is equal to the market value of the respective unit(s) in an Acquired Trust given in respect of acquiring the new Aventus Trust unit (subsections 110-25(2) and 110-55(2)). Where scrip for scrip roll-over is not chosen, or cannot be chosen, and a combination of units in the Aventus Trust and cash is received by an Eligible Acquired Trust Unitholder, the proportion of the market value of the unit in the Acquired Trust that is reasonably attributable to the receipt of cash is not included in the first element of the cost base and reduced cost base of each replacement Aventus Trust unit (subsection 112-30(1)). The market value of the units in an Acquired Trust is worked out at the time of the acquisition of the units in the Aventus Trust.

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.

53. The main issue addressed in 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/interests are exchanged for units/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. For the purposes of applying Subdivision 124-M, the acquisition of the units in each Acquired Trust by the trustee of the Aventus Trust constitutes a separate arrangement.

56. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 10 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 each of the Acquired Trusts and the Aventus Trust immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

57. Each arrangement satisfies the requirements for the roll-over under Subdivision 124-M.

Appendix 2 – Detailed contents list

58. 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

Legislative references:

- ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 115-B
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-781
 - ITAA 1997 124-781(3)(c)
 - ITAA 1997 124-781(3)(d)
 - ITAA 1997 124-783
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(3)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-790
 - ITAA 1997 124-790(1)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 Div 230
 - ITAA 1997 855-15
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001 Ch 5C
 - ITAA 1936 6(1)
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 - ITAA 1997 102-5
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 - ITAA 1997 Subdiv 115-A
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ATO references

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