Status: **legally binding**

Class Ruling

SGH Australia Plus – scrip for scrip roll-over

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for holders of units in SGH Australia Plus in relation to the acquisition of those units by SGH High Conviction Fund (SGH HC Fund) in exchange for units in SGH HC Fund.

2. Details of this scheme are set out in paragraphs 18 to 33 of this Ruling.

3. All legislative references in this Ruling are to *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:

- were a holder of units in SGH Australia Plus on 26 August 2022
- acquired your units on or after 20 September 1985
- held your units in SGH Australia Plus neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)); that is, you held your units on capital account
- participated in the exchange of units that is subject to this Ruling, and
- are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*).

Status: **legally binding**

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 18 to 33 of this Ruling.

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

When this Ruling applies

6. This Ruling applies from 1 July 2022 to 30 June 2023.

Ruling

CGT event A1 happened on the disposal of your SGH Australia Plus units

7. CGT event A1 happened when you disposed of your SGH Australia Plus units to the Trustee of SGH HC Fund (subsection 104-10(1)).

8. The time of CGT event A1 is the date on which you contracted to dispose of your SGH Australia Plus Units to the trustee of the SGH HC Fund (Implementation Date) (paragraph 104-10(3)(a)).

9. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an SGH Australia Plus unit exceed its cost base. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of an SGH Australia Plus unit are less than its reduced cost base (subsection 104-10(4)).

10. The capital proceeds from CGT event A1 happening are equal to the market value of the SGH HC Fund units that you received (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over for your SGH Australia Plus units

11. If you make a capital gain from the disposal of your SGH Australia Plus units, you may choose to obtain scrip for scrip roll-over in respect of the capital gain (section 124-781) unless the exception in paragraph 12 of this Ruling applies to you.

12. You cannot choose scrip for scrip roll-over if any capital gain you might subsequently make from the replacement SGH HC Fund units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if you choose to obtain scrip from scrip roll-over for your SGH Australia Plus units

13. If you choose to obtain scrip for scrip roll-over:

- The capital gain arising from CGT event A1 happening in respect of the disposal of your SGH Australia Plus units is disregarded (subsection 124-785(1)).
- You calculate the first element of the cost base or reduced cost base of each replacement SGH HC Fund unit by dividing the aggregate cost bases or reduced cost bases of your SGH Australia Plus units by the number of replacement SGH HC Fund units you received (subsections 124-785(2) and (4)).

- You are taken to have acquired the SGH HC Fund units on the date you acquired your original SGH Australia Plus units (table item 2(a) of subsection 115-30(1)).

Consequences if you do not, or cannot, choose scrip for scrip roll-over for your SGH Australia Plus units

14. If you do not, or cannot, choose scrip for scrip roll-over, you must account for any capital gain or capital loss from CGT event A1 happening on the disposal of your SGH Australia Plus units in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

15. If you make a capital gain and do not, or cannot, choose scrip for scrip roll-over, you can treat the capital gain as a 'discount capital gain' if you meet the conditions in Subdivision 115-A. In particular, the SGH Australia Plus units that you disposed of must have been acquired by you at least 12 months before the Implementation Date.

16. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of the replacement SGH HC Fund units you received is equal to the market value of your SGH Australia Plus units given in respect of acquiring the SGH HC Fund units, worked out as at the time you acquired the replacement SGH HC Fund units (paragraph 110-25(2)(b) and subsection 110-55(2)).

17. If you do not, or cannot, choose scrip for scrip roll-over, the date of acquisition of the replacement SGH HC Fund units is the implementation date (table item 3 of section 109-10).

Scheme

18. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

SGH Australia Plus

19. SGH Australia Plus is an Australian-resident unit trust settled on 26 September 2013. Australia Plus is a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*.

20. The trustee and responsible entity for SGH Australia Plus is Equity Trustees Limited.

21. SGH Australia Plus has one class of units on issue. As of 30 June 2022, there were 32 unit holders.

SGH High Conviction Fund

22. SGH HC Fund is an Australian-resident unit trust settled on 28 October 2004. SGH HC Fund is a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*.

23. The trustee and responsible entity for the SGH HC Fund is Equity Trustees Limited.

24. As of 30 June 2022, there were 75 unit holders.

Status: **legally binding**

25. SGH HC Fund is an attribution managed investment trust under Division 276.

The merger

26. Equity Trustees Limited, the trustee of both SGH Australia Plus and the SGH HC Fund, gain efficiencies by merging the 2 funds, which share strong similarities in investment portfolios and the same performance benchmarks.

27. On 1 August 2022, the Trustee of SGH HC Fund made an offer to all of the unit holders of SGH Australia Plus on the same terms to acquire all the units on issue in SGH Australia Plus (the Offer). The Offer was open until 26 August 2022.

28. SGH Australia Plus unit holders who accepted the Offer disposed of their SGH Australia Plus Units in exchange for new units in SGH HC Fund on 26 August 2022. No cash or other property was paid or otherwise provided to the unit holders of SGH Australia Plus. Accepting SGH Australia Plus unit holders all received the same class of units in SGH HC Fund.

29. As a result of the Offer, the trustee of SGH HC Fund acquired more than 80% of the units on issue in SGH Australia Plus.

30. The number of SGH HC Fund units that SGH Australia Plus unit holders received was determined by reference to the market value of each SGH Australia Plus unit and each SGH HC Fund unit on the Implementation Date. The accepting SGH Australia Plus unit holders received a number of SGH HC Fund units with a total market value that was substantially equivalent to the total market value of their SGH Australia Plus units.

Other matters

31. The trustee of SGH HC Fund will not make a choice to deny a roll-over to the unit holders of SGH Australia Plus under subsection 124-795(4).

32. SGH Australia Plus and SGH HC Fund did not have a ‘significant stakeholder’ or ‘common stakeholder’ in relation to the scheme within the meaning of those terms in section 124-783.

33. SGH Australia Plus unit holders and the Trustee of SGH HC Fund dealt with each other at arm’s length (for the purposes of subsection 124-781(4)).

Commissioner of Taxation
14 September 2022

Status: **not legally binding**

Appendix – Explanation

This Explanation 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.

Scrip for scrip roll-over

34. 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 a unit holder to disregard a capital gain from the disposal of a unit if the unit holder receives a replacement unit in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement unit.

35. Subdivision 124-M contains a number of conditions for, and exceptions to, a unit holder being able to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- units are exchanged for units in another trust
- entities have fixed entitlements to all of the income and capital of the original and the acquiring trusts
- the exchange is in consequence of an arrangement that satisfies subsection 124-781(2) or (2A)
- the conditions for the roll-over under subsection 124-781(3) are satisfied
- further conditions in subsection 124-781(4), if applicable, are satisfied, and
- exceptions for the roll-over in section 124-795 are not applicable.

36. The scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(a)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)(b)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781
- ITAA 1997 124-781(2)
- ITAA 1997 124-781(2A)
- ITAA 1997 124-781(3)
- ITAA 1997 124-781(4)
- ITAA 1997 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- ITAA 1997 Div 276
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Ch 5C

ATO references

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