



***CR 2003/86 - Income tax: scrip for scrip roll-over:
exchange of: units in Colonial First State
Development Trust, Colonial First State Industrial
Property Trust and Colonial First State Commercial
Property Trust for units in Commonwealth Property
Office Fund, and units in Colonial First State Retail
Property Trust for units in the Gandel Retail Trust***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2002*



Class Ruling

Income tax: scrip for scrip roll-over: exchange of: units in Colonial First State Development Trust, Colonial First State Industrial Property Trust and Colonial First State Commercial Property Trust for units in Commonwealth Property Office Fund, and units in Colonial First State Retail Property Trust for units in the Gandel Retail Trust

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law' identified below applies to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law dealt with in this Ruling is Subdivision 124-M of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to which this Ruling applies is the holders of units in Colonial First State Development Trust (CFD), Colonial First State Retail Property Trust (CMF), Colonial First State Industrial Property Trust (CIP) and Colonial First State Commercial Property Trust (COC), (collectively the 'Stapled Trusts') listed for quotation on

the Australian Stock Exchange as the Colonial First State Property Trust Group (CFT Stapled Securities) who:

- (a) are 'residents of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- (b) acquired units in CFD, CMF, CIP and/or COC after 20 September 1985;
- (c) disposed of their units in each Stapled Trust to Commonwealth Managed Investments Limited (CMIL) as the responsible entity for Commonwealth Property Office Fund (CPA) and the Gandel Retail Trust (GAN), in exchange for units in CPA and GAN and cash;
- (d) did not elect to receive cash proceeds for all of their units in each Stapled Trust via a bookbuild (the cash alternative);
- (e) choose CGT scrip for scrip roll-over in accordance with paragraph 124-781(3)(c) of the ITAA 1997;
- (f) apart from the roll-over for which Subdivision 124-M of the ITAA 1997 provides, would make a capital gain from a CGT event happening to their unit in a Stapled Trust;
- (g) might make a capital gain from a replacement unit in CPA and GAN which would not be disregarded (except because of a roll-over); and
- (h) are not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions as used in Subdivision 124-M of the ITAA 1997.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 to 13 in this Ruling.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:
 - (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
 - (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Class Ruling applies to the 2002-2003 income year.

Arrangement

9. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- (a) Class Ruling application dated 19 November 2002 from Greenwoods & Freehills requesting that the Commissioner make a Class Ruling in relation to the capital gains scrip for scrip roll-over provisions as they apply to the exchange of units in the Stapled Trusts for units in CPA and GAN;
- (b) Letter dated 7 August 2002 from Greenwoods & Freehills requesting the Commissioner to rule on whether unitholders have fixed entitlements in relation to the transfer of units contemplated in the arrangement;
- (c) The documentation accompanying the letter from Greenwoods & Freehills dated 7 August 2002 was as follows:
 - Current (at that time) and proposed structure diagram;

- Constitutions of GAN, CMF, CIP, COC, CFD and CPA;
 - Draft of the proposed amended constitutions for GAN, CMF, CIP, COC, CFD and CPA marked up with changes made as part of the arrangement the subject of this ruling;
 - Dividend Reinvestment Plans for GAN and CFT;
 - ASIC and ASX waivers for GAN; ASX waivers for CMF, COC, CIP and CFD; and
 - Colonial First State Property Trusts — Notices of Meeting and Explanatory Memorandum dated 13 November 1999;
- (d) Facsimile dated 4 September 2002 from Greenwoods & Freehills outlining the enhanced offer to holders of CFT Stapled Securities attaching:
- ASX/Media release dated 29 August 2002 entitled 'Enhancement of CPA/GAN offer to CFT Unitholders';
 - ASX/Media release dated 29 August 2002 addressed to unitholders to inform them of recent developments and a revised timetable; and
 - ASX release dated 3 September 2002 issued by the Manager of Colonial First State Property Trust Group entitled 'Timetable of Takeovers Panel';
- (e) Facsimile dated 18 September 2002 from Greenwoods & Freehills advising of the new class of units on issue for GAN, also attaching:
- Press releases dated 17 September 2002 specifying the date of the unitholders meetings for GAN, CFT and CPA;
- (f) Letter dated 24 September 2002 from Greenwoods & Freehills attaching the Notice of Meeting and Explanatory Memorandums for:
- CFT;
 - CPA; and
 - GAN;

- (g) Facsimile dated 1 October 2002 from Greenwoods & Freehills attaching Press Releases dated 30 September 2002 advising of the approval by unitholders of CFT, CPA and GAN of the transactions;
- (h) Facsimile dated 23 December 2002 from Greenwoods & Freehills clarifying terms within the Class Ruling application dated 19 November 2002 and the letter dated 7 August 2002;
- (i) Letter dated 7 April 2003 from Greenwoods & Freehills and attachments in response to a request for further information and documentation by the Commissioner on 11 February 2003; and
- (j) Letter dated 7 July 2003 from Greenwoods & Freehills and attachment in response to a request for further information by the Commissioner on 2 July 2003.

10. Prior to implementation of the arrangement the subject of this Ruling, each CFT Stapled Security comprised one CMF unit, one COC unit, one CIP unit and one CFD unit.

11. The arrangement involved the acquisition by:

- CMIL as responsible entity of CPA of the units in COC, CIP and CFD;
- CMIL as responsible entity of GAN of the units in CMF.

12. Under the arrangement which is the subject of this ruling, Australian resident holders of CFT Stapled Securities had the option of receiving:

- units in CPA and GAN and cash component; or
- the cash alternative.

The cash alternative was mandatory for non-resident holders of CFT Stapled Securities.

13. Under the arrangement to which this Ruling applies:

- (a) COC, CIP, CFD and CMF are Australian resident trust estates as defined in subsection 95(2) of the ITAA 1936 and resident trusts for CGT purposes as defined in subsection 995-1(1) of the ITAA 1997; and
- (b) CMIL, as responsible entity of CPA and GAN, is a resident of Australia as defined in subsection 6(1) of the ITAA 1936.

Note: certain information received from Greenwoods & Freehills has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

Ruling

14. Subject to the qualifications in paragraphs 4 to 6 of this Ruling, holders of CFT Stapled Securities who are within the class of persons to whom this Ruling applies (as set out in paragraph 3 of this Ruling) will be eligible to choose scrip for scrip roll-over under paragraph 124-781(3)(c) of the ITAA 1997 for the disposal of their units in the Stapled Trusts to the extent they received new units in GAN and CPA under the arrangement. Such holders will not be entitled to choose scrip for scrip roll-over to the extent they received cash as consideration for the disposal of their units.

Explanation

Availability of scrip for scrip roll-over

15. Subdivision 124-M of the ITAA 1997 contains a number of conditions for, and exceptions to, the eligibility of an entity to choose the roll-over. Below is an outline of the main conditions and exceptions that are relevant to the circumstances of the arrangement that is the subject of this Ruling.

16. **Subparagraph 124-781(1)(a)(i) of the ITAA 1997 requires an entity to exchange a unit in a trust (the 'original trust') for a unit in another trust.**

17. This requirement is satisfied because the holders of CFT Stapled Securities exchanged each of their units in the Stapled Trusts for units in CPA or GAN.

18. **Paragraph 124-781(1)(b) of the ITAA 1997 requires that entities have fixed entitlements to all of the income and capital of the original entity (each Stapled Trust) and the acquiring entity (CPA or GAN).**

19. Having regard to:

- all of the documents and any other material referred to in paragraph 9 of this Ruling; and
- all the facts comprising the arrangement as described in paragraphs 10 to 13 of this Ruling

it is considered that for the purposes of section 124-781(1)(b) of the ITAA 1997 there are fixed entitlements to all of the income and

capital of the Stapled Trusts, CPA and GAN immediately before, during and immediately after the arrangement referred to in paragraphs 10 to 13 of this Ruling occurs.

20. Paragraphs 124-781(1)(c) and 124-781(2)(a) of the ITAA 1997 require that the exchange of units is in consequence of an arrangement that results in the acquiring entity (CPA or GAN) becoming the owner of 80% or more of the trust voting interests in the original entity (each Stapled Trust).

21. The arrangement that is the subject of this ruling constitutes two arrangements for the purposes of these provisions. This requirement is satisfied for both arrangements as CPA acquired 100% of the units in COC, CIP and CFD and GAN acquired 100% of the units in CMF.

22. Paragraphs 124-781(1)(c) and 124-781(2)(b) of the ITAA 1997 require that the exchange of units is in consequence of an arrangement in which at least all owners of trust voting interests in the original entity (each Stapled Trust) could participate.

23. This requirement is satisfied because all existing holders of CFT Stapled Securities (including non-residents) as set out in the Register of Unitholders were entitled to vote and dispose of their units in the Stapled Trusts.

24. Paragraphs 124-781(1)(c) and 124-781(2)(c) of the ITAA 1997 require that the exchange of units is in consequence of an arrangement in which participation was available on substantially the same terms for all of the owners of units of a particular type.

25. This requirement is satisfied as both arrangements gave each resident holder of Stapled Securities a choice as to the manner in which to dispose of their units and as to the consideration receivable in exchange for the disposal.

26. Although the choices that foreign holders of CFT Stapled Securities had in relation to the consideration available under the arrangement were restricted, the arrangement is still one that was available on substantially the same terms for all owners of units.

27. An arrangement is considered to be on substantially the same terms if the capital proceeds that each participant receives differ for reasons such as those outlined in subsection 619(3) of the *Corporations Act 2001*. The bookbuild mechanism which applied to non-residents is consistent with the matters outlined in that provision.

28. Paragraphs 124-781(3)(a) and 124-781(3)(b) of the ITAA 1997 require that the original interest holder acquired its interest on or after 20 September 1985 and apart from the

roll-over, would make a capital gain from a CGT event happening in relation to its original interest.

29. This Ruling applies to holders of CFT Stapled Securities to the extent to which they acquired their interest in CMF, COC, CFD and/or CIP after 20 September 1985 and who would otherwise make a capital gain in relation to the original interest – refer paragraphs 3(b) and (3)(f) of this Ruling.

30. Paragraph 124-781(3)(c) of the ITAA 1997 requires that the original interest holder choose to obtain roll-over.

31. This Ruling applies only to those unitholders who choose to obtain roll-over – refer paragraph 3(e) of this Ruling.

32. Subsection 124-781(4) of the ITAA 1997 provides additional requirements to be satisfied if the original interest holder and the trustee of the acquiring entity did not deal with each other at arm's length, and neither the original entity nor the acquiring entity had at least 300 beneficiaries just before the arrangement started. The additional requirements are:

- (a) the market value of the original interest holder's capital proceeds for the exchange must be at least substantially the same as the market value of its original interest; and**
- (b) the replacement interest must carry the same kind of rights and obligations as those attached to the original interest.**

33. Subsection 124-781(4) of the ITAA 1997 will not apply because each Stapled Trust had more than 300 members just before the arrangements started. (Section 124-810 of the ITAA 1997 will not apply to the Stapled Trusts because their ownership is not concentrated in the manner contemplated by that section.)

34. Section 124-790 of the ITAA 1997 provides that only a partial roll-over is available if a unitholder receives something other than a replacement unit as capital proceeds for an original unit.

35. Roll-over is only available to the extent that holders of CFT Stapled Securities received new GAN and CPA units. Therefore, to the extent holders received the cash component (being 28.5 cents for each CFT Stapled Security) roll-over will not be available.

36. Roll-over under Subdivision 124-M of the ITAA 1997 is not available if any of the exceptions in section 124-795 of the ITAA applies. These exceptions will not apply in this case as outlined below.

37. Subsection 124-795(1) of the ITAA 1997 provides that roll-over for non-resident interest holders is not available if their replacement interests are in an entity that is not a resident trust for CGT purposes. This Ruling does not apply to non-resident unitholders as the cash alternative was mandatory for non-resident holders of CFT Stapled Securities – refer paragraph 12 of this Ruling.

38. Paragraph 124-795(2)(a) of the ITAA 1997 provides that roll-over is not available if any capital gain an interest holder might make from their replacement interest would be disregarded (except because of a roll-over). This Ruling applies to those unitholders who might make a capital gain from a replacement interest in CPA and GAN which would not be disregarded (except because of a roll-over) - refer paragraph 3(g) of this Ruling.

39. The other exceptions in section 124-795 of the ITAA 1997 are not relevant as they relate to roll-overs that involve companies.

Detailed contents list

40. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

1 October 2003

Previous draft:

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Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16

Subject references:

- acquiring entity
- arrangement
- capital
- capital gain
- class of persons
- exchange
- fixed entitlement
- income
- original entity
- original interest
- replacement interest
- roll-over
- scrip
- scrip for scrip roll-over
- unit
- unitholder
- unit trust

Legislative References:

- ITAA 1936 6(1)
- ITAA 1936 95(2)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781(1)(a)(i)
- ITAA 1997 124-781(1)(b)
- ITAA 1997 124-781(1)(c)
- ITAA 1997 124-781(2)(a)
- ITAA 1997 124-781(2)(b)
- ITAA 1997 124-781(2)(c)
- ITAA 1997 124-781(3)(a)
- ITAA 1997 124-781(3)(b)
- ITAA 1997 124-781(3)(c)
- ITAA 1997 124-781(4)
- ITAA 1997 124-790
- ITAA 1997 124-795
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 995-1(1)
- Copyright Act 1968
- Corporations Act 2001 619(3)

ATO references

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