



Class Ruling

Income tax: DB RREEF Office Trust – DB RREEF Trust – cash sale and exchange facilities

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax laws**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **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 laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax laws

2. The tax laws dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 108-5 of the ITAA 1997;
- section 109-5 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; and
- section 116-20 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies are the owners of units in DB RREEF Office Trust who:

- held those units in that trust on capital account;
- chose to dispose of their units in that trust under the arrangement that is the subject of this Ruling; and
- are residents of Australia within the meaning of that term in subsection 6(1) of the ITAA 1936.

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 in paragraphs 10 to 24.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- 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
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies to the income year ending 30 June 2005.

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the arrangement during the term of the Ruling.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. In the description, the following acronyms are used to identify the entities involved:

DB RREEF Diversified Trust	DDF
DB RREEF Industrial Trust	DIT
DB RREEF Office Trust	DOT
DB RREEF Operations Trust	DRO
Deutsche Asset Management (Australia) Ltd	DeAM
DB Real Estate Australia Limited	DBRE
DB RREEF Funds Management Limited	DRFM
Deutsche trust group also known as DB RREEF Trust	DRT

11. This description is based on a number of documents. These documents, or the relevant parts of them, 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:

- class ruling request from Greenwoods and Freehills Pty Limited (Greenwoods and Freehills) dated 27 August 2004;
- DOT trust deed dated 17 June 1998 (as amended up to 19 April 2001) (existing DOT constitution);
- Supplemental Deed Poll dated 13 September 2004 under which the existing DOT constitution is amended (DOT Supplemental Deed Poll);
- Deed Poll dated 15 September 2004 executed by DRFM in favour of the unitholders of DIT, DOT and DDF (Stapling Implementation Deed Poll);
- Deed Poll dated 12 October 2004 executed by Merrill Lynch Equities (Australia) Limited (Sale Bank);
- Cash Sale and Exchange Facilities Notice for DOT, (DOT cash sale and exchange facilities notice) and accompanying Cash Sale and Exchange Facilities Election Form (election form);
- Explanatory Memorandum & Product Disclosure Statement in relation to a proposal to staple the units of

DDF, DOT, DIT and DRO dated 27 August 2004 (Explanatory Memorandum);

- DOT Transaction Overview and Notice of Meeting dated 27 August 2004;
- submissions to Australian Securities and Investment Commission (ASIC) relating to proposed stapling of units in DIT, DOT, DDF and DRO prepared by Freehills dated 4 and 9 August 2004;
- notices lodged with ASIC in relation to Deutsche Group holdings in DDF, DIT and DOT;
- letter dated 23 September 2004 from Greenwoods and Freehills;
- notes of meetings between ATO, Greenwoods and Freehills and representatives of DIT, DOT and DDF (prepared by the ATO and confirmed by Greenwoods and Freehills) from 22 June 2004 to date; and
- e-mails from Greenwoods and Freehills from 22 June 2004 to date.

Note 1: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

Note 2: certain terms used in this Ruling are also defined and explained in the Glossary of terms, at Appendix A.

12. The arrangement that is the subject of this Ruling is referred to as the 'cash sale and exchange facilities' (the facilities). It is separate from the stapling arrangement which is the subject of a separate class ruling, Class Ruling CR 2004/146.

13. The dates for the events described in this Ruling are set out in the following table and in the diagram at Appendix B:

Event	Date
Election date	25 September 2004
Effective date	30 September 2004
Last trading date	5 October 2004
Commencement of trading in stapled securities on a deferred settlement basis	6 October 2004
Stapling record date	12 October 2004

Issue date

19 October 2004

14. On 4 August 2004, the directors of DeAM (the then trustee of DIT and DOT) and the directors of DBRE (the then trustee of DDF) announced a proposal to combine the three trusts with a newly formed trading trust, DRO, by stapling units in each trust together, and certain other transactions. DRFM then became the trustee of all the trusts in the new group known as DRT.

15. The stapling was achieved by the amendment of the constitutions of DIT, DOT and DDF, resulting in the issue of units in each trust (plus the newly formed DRO) to unitholders in each other trust. Before the stapling, the units in DIT and DOT were split and consolidated respectively (converted DIT unit and converted DOT unit). The units in the trusts once stapled formed a DRT stapled security.

16. The directors of DeAM and DBRE determined the value contributed by the unitholders of DIT, DOT and DDF (stapling percentage) and their entitlement to DRT stapled securities (stapling ratio) as follows:

Trust	Stapling percentage	Stapling ratio	Approximate number of stapled securities per 100 existing units
DDF	38.8%	1.0000000000	100
DIT	19.8%	1.5110759679	151
DOT	41.4%	0.9317613987	93

The actual number of DRT stapled securities issued to individual unitholders was rounded to the nearest whole number.

17. Rather than participate in the stapling arrangement described in Class Ruling CR2004/146, a DOT unitholder could elect to sell their existing DOT units to the Sale Bank under the facilities. No brokerage or other fees were charged on a sale under the facilities.

18. To participate in the facilities, a DOT unitholder had to complete and lodge an election form by the election date, which constituted an irrevocable offer by the unitholder to sell a specified number of their existing DOT units. The DOT unitholder then became bound to transfer the specified number of DOT units to the Sale Bank. The Sale Bank was bound by deed poll in favour of DOT and each

unitholder to perform its obligations in respect of the facilities. A unitholder could also sell their other existing DOT units (not the subject of an election to use the facilities) on market until the last trading date.

19. A binding contract for the sale of existing DOT units between a DOT unitholder and the Sale Bank was formed on the effective date. On that date, the unitholder's offer to sell a specified number of existing DOT units was accepted by the Sale Bank.

20. A DOT unitholder could elect to participate in the facilities for all or some of their existing DOT units and for each unit elect to receive either cash from the Sale Bank (cash sale facility) or to have DRT stapled securities transferred to them by the Sale Bank (exchange facility). A DRT stapled security comprises one converted DIT unit, one converted DOT unit, one DDF unit and one DRO unit.

Cash Sale Facility

21. By electing to participate in the cash sale facility, a DOT unitholder agreed to sell their existing DOT units to the Sale Bank for cash. The total cash proceeds received by a DOT unitholder for existing DOT units sold in the cash sale facility is calculated as the number of DOT units sold multiplied by the stapling ratio of 0.9317613987 (rounded to the nearest whole number) and then multiplied by the sale price for a DRT stapled security.

22. The sale price for a DRT stapled security is the average sale price for DRT stapled securities sold on the Australian Stock Exchange by the Sale Bank for the facility period. DRT will announce the sale price as soon as possible after the stapling.

Exchange Facility

23. By electing to participate in the exchange facility, a DOT unitholder agreed to sell a specified number of their existing DOT units to the Sale Bank and received as consideration DRT stapled securities. The total number of DRT stapled securities transferred to a DOT unitholder is calculated by multiplying the number of existing DOT units disposed of by the stapling ratio of 0.9317613987, rounded to the nearest whole number.

24. DRT stapled securities were transferred to the unitholder by the Sale Bank on the issue date.

Ruling

Disposal of DOT units

25. CGT event A1 in section 104-10 of the ITAA 1997 happened when a DOT unitholder disposed of an existing DOT unit to the Sale Bank under the facilities. The event happened on the effective date.

26. For the purposes of section 116-20 of the ITAA 1997, the capital proceeds from the CGT event happening to each existing DOT unit are:

- for a unitholder who chose to participate in the cash sale facility — the amount of money received divided by the number of DOT units disposed of; and
- for a unitholder who chose to participate in the exchange facility — the market value of the DRT stapled securities on the effective date received by the unitholder divided by the number of DOT units disposed of.

Acquisition of DRT stapled securities under exchange facility

27. Each converted DIT unit, converted DOT unit, DDF unit and DRO unit that together make up a DRT stapled security acquired under the exchange facility is a separate CGT asset for the purposes of section 108-5 of the ITAA 1997. A DOT unitholder is taken to have acquired these assets on the effective date (section 109-5 of the ITAA 1997).

28. The first element of the cost base and reduced cost base of each converted DIT unit, converted DOT unit, DDF unit and DRO unit is a reasonable part of the market value on the effective date of the existing DOT units given to acquire them (sections 110-25, 110-55 and 112-30 of the ITAA 1997).

Explanation

Disposal of units under the facilities

29. CGT event A1 in section 104-10 of the ITAA 1997 happened when a DOT unitholder disposed of an existing DOT unit to the Sale Bank under the facilities. The time of the event was when the contract for sale was entered into. The contract was entered into on the effective date. At that time there was acceptance by the Sale Bank of the offer by the DOT unitholder and all conditions precedent to formation of the contract had been satisfied or otherwise waived.

30. The DOT unitholder made a capital gain if the capital proceeds from the disposal of the DOT unit exceeded its cost base. They made a capital loss if the capital proceeds were less than the reduced cost base of the DOT unit (subsection 104-10(4) of the ITAA 1997). The amount of capital proceeds depends on whether the DOT unitholder chose to participate in the cash sale facility or the exchange facility.

Capital proceeds

31. The capital proceeds from a CGT event is the total of:

- the money that is received, or which is entitled to be received, in respect of the event happening; and
- the market value of any property that is received, or which is entitled to be received, in respect of the event happening. The market value is determined at the time of the event (section 116-20 of the ITAA 1997).

32. Under the cash sale facility, the consideration that a DOT unitholder received for each unit is an amount of money. Accordingly, this amount is the capital proceeds for each DOT unit.

33. Under the exchange facility, the consideration that a DOT unitholder received for their existing DOT units is DRT stapled securities, in the ratio of 0.9317613987 DRT stapled securities for each existing DOT unit transferred to the Sale Bank, rounded to the nearest whole number. A DRT stapled security comprises one converted DIT unit, one converted DOT unit, one DDF unit and one DRO unit. Accordingly, the capital proceeds that a DOT unitholder receives for each existing DOT unit are the total market value of the DRT stapled securities received (when CGT event A1 happened) under the exchange facilities divided by the number of existing DOT units transferred.

34. The Commissioner is satisfied that the volume weighted average price (VWAP) for DRT stapled securities over the first five days of trading on a deferred settlement basis is a reasonable measure of the market value of the DRT stapled securities at the time CGT event A1 happened to the existing DOT units. The VWAP is the average price of security transactions for a period taking into account the number of securities in each transaction. It is calculated by dividing the total value of stapled securities traded over the period by the total number of stapled securities traded over that period. DRT will announce this price as soon as practicable after the end of the VWAP period.

Cost base and time of acquisition of units that make up a DRT stapled security acquired under the exchange facility

35. If a taxpayer acquires a CGT asset as a result of another entity disposing of it to them under CGT event A1, the time of acquisition of the asset is taken to be:

- the time when the contract of disposal is entered into; or
- if there is no contract, when the disposing entity stops being the asset's owner (subsection 109-5(2) of the ITAA 1997).

36. Under the exchange facility, the disposal of the DRT stapled securities by the Sale Bank to the DOT unitholder resulted in CGT event A1 happening to the Sale Bank. That event happened under a contract entered into between the Sale Bank and the DOT unitholder on the effective date.

37. Accordingly, under the exchange facility, a DOT unitholder is taken to have acquired each converted DIT unit, converted DOT unit, DDF unit and DRO unit (together make up a DRT stapled security) at the same time the unitholder is taken to have disposed of their existing DOT units.

38. The first element of the cost base (section 110-25 of the ITAA 1997) and reduced cost base (section 110-55 of the ITAA 1997) of a CGT asset is the total of the:

- money that is paid, or required to be paid, in respect of acquiring it; and
- market value of any property that is given, or which is required to be given, in respect of acquiring it. The market value is determined at the time of acquisition.

39. If a CGT asset is acquired because of a transaction and only part of the expenditure (including the giving of property) incurred under the transaction relates to the acquisition of the asset, the first element of the cost base and reduced cost base of the asset is that part of the expenditure that is reasonably attributable to the acquisition of the asset (subsection 112-30(1) of the ITAA 1997).

40. A DOT unitholder gave as consideration in respect of the acquisition of each converted DIT unit, converted DOT unit, DDF unit and DRO unit that together make up a DRT stapled security, existing DOT units in the ratio of 1.0732361325 (1/0.9317613987) of an existing DOT unit for every one DRT stapled security to be received. The market value of this consideration is determined on the effective date.

41. The Commissioner considers it reasonable to apportion the market value of the existing DOT units across the individual units comprising a DRT stapled security based on the respective stapling percentages of DIT, DOT and DDF, but also having regard to the net tangible assets of DRO at that time.

42. The Commissioner is satisfied that the VWAP for DRT stapled securities over the first five days of trading on a deferred settlement basis can be used to determine the market value on the effective date of the existing DOT units disposed of to the Sale Bank. This value, and the apportionment details referred to in paragraph 41 of this Ruling, will be announced by DRT as soon as practicable after the end of the VWAP period.

Detailed contents list

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

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Commissioner of Taxation15 December 2004

Previous draft:

Not previously issued as a draft

Legislative references:

- TAA 1953 Part IVAAA
- Copyright Act 1968
- ITAA 1936 6(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 108-5
- ITAA 1997 109-5
- ITAA 1997 109-5(2)
- ITAA 1997 110-25
- ITAA 1997 110-55
- ITAA 1997 112-30
- ITAA 1997 112-30(1)
- ITAA 1997 116-20

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16;
 CR 2004/144; CR 2004/145;
 CR 2004/146; CR 2004/147;
 CR 2004/148

ATO references

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Appendix A*Glossary of terms*

<i>Ruling Terminology</i>	<i>Meaning</i>
<i>Certain terms used in this Ruling have the same meaning as corresponding terms in the Explanatory Memorandum and DIT cash sale and exchange facilities notice.</i>	
DRT stapled security	Stapled Security
DDF unit	DDF Unit
DIT unit	DIT Unit
DOT unit	DOT Unit
DRO unit	DRO Unit
effective date	Effective Date
issue date	Issue Date
last trading date	Last Trading Date
stapling record date	Stapling Record Date
<i>Other terms used in this ruling have the following meaning.</i>	
Election date	The latest date for lodgement of an election form.
existing DOT unit	DOT unit owned before the stapling record date.
original DIT unit	DIT unit owned on the stapling record date.
original DOT unit	DOT unit owned on the stapling record date.
converted DIT unit	Original DIT unit split in the ratio 1.5110759679 for each original DIT unit.
converted DOT unit	Original DOT unit consolidated in the ratio 0.9317613987 for each original DOT unit.

Appendix B - Cash Sale and Exchange Facilities