



CR 2004/24 - Income tax: capital gains: scrip for scrip roll-over: exchange of units in the AMP Industrial Trust for units in the Macquarie Goodman Industrial 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 2003*



Class Ruling

Income tax: capital gains: scrip for scrip roll-over: exchange of units in the AMP Industrial Trust for units in the Macquarie Goodman Industrial 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

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 AMP Industrial Trust (AMP) 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) disposed of their units in AMP in exchange for units in the Macquarie Goodman Industrial Trust (MGI); and
- (c) 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 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:
 - 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 Class Ruling applies to the 2003-04 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 9 September 2003 and other correspondence from Allens Arthur Robinson
- (b) Macquarie Goodman Bidder's Statement dated 16 July 2003;
- (c) AMP Target's Statement dated 24 July 2003;
- (d) copy of the Constitution of AMP;
- (e) copy of the Constitution of MGI;
- (f) copy of the Annual Report for AMP for the year ended 30 June 2002;
- (g) copy of the Annual Report for MGI for the year ended 30 June 2002;
- (h) copy of the MGI Distribution Reinvestment Plan dated April 2001;
- (i) copy of the Prospectus for the issue of Reset Preference Units by Macquarie Goodman Capital Trust dated 16 April 2002; and
- (j) copy of the terms and conditions of the MGI Unitholder Purchase Plan dated February 2003.

10. The arrangement that is the subject of this Ruling involves the acquisition of the units in AMP by Macquarie Goodman Funds Management Limited as Responsible Entity for MGI.

11. On 18 July 2003, MGI made an offer to acquire all of the units in AMP. The offer was able to be accepted up until 29 August 2003. Under the offer AMP unitholders were entitled to receive 0.811 of an MGI unit plus 5 cents cash for each AMP unit.

12. At the close of the offer, approximately 93% of the AMP units had been acquired by MGI. The remaining units were compulsorily acquired after that time on terms consistent with the offer.

13. Under the arrangement to which this Ruling applies:

- (a) MGI is an Australian resident trust estate as defined in subsection 95(2) of the ITAA 1936 and a resident trust for CGT purposes as defined in subsection 995-1(1) of the ITAA 1997; and
- (b) Macquarie Goodman Funds Management Limited as Responsible Entity for MGI is a resident of Australia as defined in subsection 6(1) of the ITAA 1936.

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

Ruling

14. Subject to the qualifications in paragraphs 4 to 6 of this Ruling, holders of units in AMP who are within the class of persons to whom this Ruling applies can choose roll-over under paragraph 124-781(3)(c) of the ITAA 1997 for the disposal of an AMP unit acquired after 19 September 1985 if:

- apart from the roll-over, they would make a capital gain from the disposal of the AMP unit under the arrangement; and
- they might make a capital gain from a replacement unit in MGI which would not be disregarded (except because of a roll-over).

15. Pursuant to section 124-790 of the ITAA 1997, a unitholder who chooses roll-over will only be entitled to a partial roll-over. Roll-over will not be available to the extent that an AMP unit is exchanged for cash.

Explanation

Availability of scrip for scrip roll-over

16. Scrip for scrip roll-over enables a unitholder to disregard a capital gain from a unit that is transferred as part of a takeover or merger to the extent that the unitholder receives a replacement unit in exchange. The roll-over also provides that the cost base and reduced cost base of each new unit is based on those of the original units at the time of the roll-over.

17. Roll-over will be available for an AMP unitholder if certain conditions are satisfied. 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.

18. Subparagraph 124-781(1)(a)(i) requires an entity (an AMP unitholder) to exchange a unit in a trust (AMP) for a unit in another trust (MGI).

19. This requirement is satisfied because the AMP unitholders exchanged each of their units in AMP for a part of a unit in MGI.

20. Paragraph 124-781(1)(b) requires that entities have fixed entitlements to all of the income and capital of the original entity(AMP) and the acquiring entity (MGI).

21. 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 and 11 of 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 AMP and MGI immediately before, during and immediately after the arrangement that is the subject of this Ruling.

22. Paragraphs 124-781(1)(c) and 124-781(2)(a) require that the exchange of units is in consequence of an arrangement that results in the acquiring entity (MGI) becoming the owner of 80% or more of the trust voting interests in the original entity (AMP).

23. A 'trust voting interest' is defined in subsection 124-781(6) as an interest that confers rights of the same or a similar kind as the rights conferred by a voting share in a company. 'Voting shares' are defined in subsection 995-1(1) of the ITAA 1997 by reference to the definition in section 9 of the *Corporations Act 2001*.

24. All of the AMP units are trust voting interests. As a consequence of the offer made on 18 July 2003, MGI became the owner of 100% of the AMP units. Therefore, this requirement is satisfied.

25. Paragraphs 124-781(1)(c) and 124-781(2)(b) 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 (AMP) could participate.

26. This requirement is satisfied because the offer by MGI was made to all of the existing AMP unitholders including non-residents.

27. Paragraphs 124-781(1)(c) and 124-781(2)(c) 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.

28. AMP has only one class of units. This requirement is satisfied because the same offer was made to all AMP unitholders.

29. Although the units that non-resident AMP unitholders were otherwise entitled to were issued to a nominee for sale, the arrangement is still one that was available on substantially the same terms for all AMP unitholders.

30. 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* (about the issue of securities to a nominee for

foreign holders). There is no requirement that subsection 619(3) actually applies to an arrangement.

31. Paragraphs 124-781(3)(a) and 124-781(3)(b) require that the original interest holder (an AMP unitholder) acquired its interest 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.

32. This Ruling only applies to AMP unitholders to the extent to which they acquired their unit in AMP after 19 September 1985 and would otherwise make a capital gain from the disposal of it to MGI - refer to paragraph 14.

33. Whether an AMP unitholder would make a capital gain, apart from the roll-over is dependent on the specific circumstances of each unitholder – in particular the cost base of each AMP unit at the time of the disposal and the value of the consideration received.

34. Roll-over is not available if, in respect of an AMP unit, a unitholder would make a capital loss.

35. Paragraph 124-781(3)(c) requires that the original interest holder (an AMP unitholder) choose to obtain roll-over.

36. This Ruling applies only to those AMP unitholders who choose to obtain roll-over - refer to paragraph 14.

37. Subsection 124-781(4) contains additional requirements if the original interest holder (an AMP unitholder) and the trustee of the acquiring entity (MGI) did not deal with each other at arm's length, and neither the original entity (AMP) nor the acquiring entity had at least 300 beneficiaries just before the arrangement started. The additional requirements are:

- 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
- the replacement interest must carry the same kind of rights and obligations as those attached to the original interest.

38. Subsection 124-781(4) will not apply because AMP and MGI each had more than 300 members just before the arrangement started. (Section 124-810 will not apply to AMP or MGI because their ownership is not concentrated in the manner contemplated by that section.)

39. Roll-over under Subdivision 124-M is not available if any of the exceptions in section 124-795 applies.

40. Subsection 124-795(1) 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. Non-residents are

not within the class of persons to whom this Ruling applies: refer to paragraph 3(a).

41. Paragraph 124-795(2)(a) 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 AMP which would not be disregarded (except because of a roll-over) - refer to paragraph 14.

42. The other exceptions in section 124-795 are not relevant as they relate to roll-overs that involve companies.

What is the rollover?

43. Section 124-790 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 (an AMP unit).

44. Roll-over is only available to the extent that an AMP unitholder received a unit in MGI as capital proceeds for an AMP unit. To the extent that the unitholder received cash (ineligible proceeds), roll-over is not available.

45. In working out the capital gain attributable to their ineligible proceeds, an AMP unitholder deducts from those proceeds a reasonable portion of the cost base (just before the disposal to MGI) of their AMP unit. The remaining cost base is taken into account in working out the cost base of the replacement MGI unit.

46. The cost base of an AMP unit just before its disposal is determined by deducting the amount of any relevant non-assessable payments in the current and earlier income years: section 104-71 of the ITAA 1997.

47. In making a reasonable apportionment of the cost base of the AMP units, it would be appropriate for a unitholder to make an apportionment having regard to the value of the ineligible proceeds and the MGI units on the date they accepted the MGI offer.

48. The capital gain relating to the ineligible proceeds will be taken into account in working out the unitholder's net capital gain for the income year in which they accepted the MGI offer.

Example

49. This example shows how a capital gain attributable to the ineligible proceeds is calculated. It also illustrates how the acquisition cost of an MGI unit is to be calculated.

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50. John acquired 1000 units in AMP after 19 September 1985. On 18 July 2003 he accepted the offer to dispose of his units. At that time the cost base of each of his units, adjusted as required by section 104-71, was \$1.00.

51. John received:

- 811 MGI units (each with a market value of \$1.52 on the date the offer was accepted); and
- \$50.00 cash.

52. The total amount of capital proceeds received by John was \$1,282.70 apportioned as follows:

MGI Units	811 @ \$1.52	\$1,232.70
Cash (1,000 × \$0.05)		\$50.00

Capital gain attributable to ineligible proceeds (cash)

53. John chooses roll-over to the extent that he is able. However he must work out his capital gain in relation to the ineligible proceeds that he received. He does this as follows:

Capital gain = Ineligible capital proceeds – Cost base of ‘ineligible part’

Ineligible capital proceeds = Cash

\$50.00

Cost Base of ineligible part = $\frac{\text{Ineligible proceeds} \times \text{Cost base of AMP units}}{\text{Total proceeds}}$

$\frac{\$50.00 \times \$1,000}{\$1,282.70}$

\$38.98

= \$38.98

Capital gain = \$50.00 – \$38.98

\$11.02

Acquisition cost of MGI unit

54. John determines the acquisition cost of his MGI units by apportioning, in a reasonable way, the remaining cost base of his AMP units. He does this as follows:

$$\frac{\text{Cost base of AMP units} - \text{Cost base taken into account above}}{\text{Number of MGI units}}$$

$$\frac{\$1,000 - \$38.98}{811}$$

$$\$1.18$$

Detailed contents list

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

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Commissioner of Taxation

17 March 2004

Previous draft:

Not previously issued in draft form.

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

- 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 124-781(6)
- ITAA 1997 124-790
- ITAA 1997 124-795
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-810
- ITAA 1997 995-1(1)
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001 9
- Corporations Act 2001 619(3)

Legislative References:

- ITAA 1936 6(1)
- ITAA 1936 95(2)
- ITAA 1997 104-71

ATO References

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