



CR 2005/69 - Income tax: Trafalgar Opportunity Fund No. 4 - Trafalgar Corporate Group merger stapling arrangement

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Class Ruling

Income tax: Trafalgar Opportunity Fund No. 4 – Trafalgar Corporate Group merger stapling arrangement

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **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 law(s)

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

- Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-70 of the ITAA 1997;
- section 104-155 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 112-25 of the ITAA 1997;
- Division 725 of the ITAA 1997;
- Subdivision 725-A of the ITAA 1997;
- Subdivision 725-D of the ITAA 1997; and
- section 727-360 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies are those owners of ordinary units in Trafalgar Opportunity Fund No. 4 (TOF 4) who:

- participated in the arrangement that is the subject of this Ruling;
- hold their TOF 4 ordinary units on capital account; and
- are residents of Australia within the meaning of that term in subsection 6(1) of the *Income Tax Assessment Act 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 13.

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 2006. The arrangement was completed within that income year.

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 30 June 2006. 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. This description is based on the documents identified below. 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 KPMG dated 6 April 2005;
- Draft stapling deed for Trafalgar Corporate Group Limited (TCGL) and Trafalgar Managed Investments Limited (TMIL) dated 4 April 2005;
- Explanatory Memorandum for Trafalgar Opportunity Fund No. 4 Unitholders dated 24 June 2005;
- Implementation Deed for TCGL and TMIL dated 5 July 2005;
- Implementation Schedule dated 11 July 2005;
- KPMG Australian Taxation Report for TOF 4 on the taxation implications upon stapling dated 27 May 2005;
- TOF 4 Financial Report for the period from 1 October 2003 to 30 June 2004;
- Draft Shareholder deeds between TCGL, TMIL and Battersea (Holdings) Pty Ltd; Tangir Pty Ltd; OSTOR (No. 14) Pty Ltd; Robert Michael Whyte and Clanricarde Investments Pty Ltd dated 11 May 2005;
- TOF 4 Information Memorandum dated 27 October 2003;
- TOF 4 Constitution consolidated as at 10 December 2003;
- TOF 4 registry as at 31 December 2004;
- e-mails and correspondence from KPMG from 6 April 2005 to date; and
- Mechanics of the IPO dated 23 May 2005.

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 defined and explained in the Glossary of terms at Appendix A.

Note 3: the events described below are summarised in the diagram at Appendix B.

11. On 9 June 2005 the board of TMIL, the responsible entity for TOF 4, resolved to put a proposal to the TOF 4 unitholders to merge TOF 4, Trafalgar Platinum Fund No. 12 (TPF 12) and TCGL to form the Trafalgar Corporate Group. The merger will be achieved by stapling TOF 4 units to TPF 12 units and to TCGL shares.

12. The merger was implemented by the following steps, all of which happened on the implementation date (20 July 2005).

Step 1 – Consolidation of original TOF 4 units in the ratio of 1.0:0.410

Each holding of original TOF 4 units held by a unitholder on the stapling record date (18 July 2005) was consolidated on the basis of 0.410 of a consolidated TOF 4 unit for each original TOF 4 unit. The consolidation took place in the order the TOF 4 units were acquired by the TOF 4 unitholders and where any resultant fraction resulted in a rounding up of a TOF 4 unit, that TOF 4 unit was attributed to the TOF 4 units in the holding first acquired by the TOF 4 unitholder.

Step 2 – Capital distribution of 49.01 cents per consolidated TOF 4 unit

TOF 4 made a capital distribution (the stapling distribution) of 49.01 cents per consolidated TOF 4 unit to each TOF 4 unitholder.

Step 3 – Issue of new TPF 12 units and new TCGL shares

TMIL, on behalf of each TOF 4 unitholder, applied the stapling distribution to subscribe for new TPF 12 units (at a subscription price of 49 cents) and for new TCGL shares (at a subscription price of 0.01 cent). Each owner of consolidated TOF 4 units received one new TPF 12 unit and one new TCGL share for each of their consolidated TOF 4 units.

Step 4 – Stapling of units and shares

Each consolidated TOF 4 unit was stapled to one new TPF 12 unit and to one new TCGL share.

13. After stapling, the TOF 4 units, TPF 12 units and TCGL shares continue as separate legal assets. However, they will only be able to be traded as one security (Trafalgar Corporate Group stapled security) on the Australian Stock Exchange.

Ruling

Consolidation of original TOF 4 units

14. The consolidation of original TOF 4 units did not result in a CGT event happening. Each unitholder will be taken to have a cost base and reduced cost base for their consolidated TOF 4 units based on the cost base and reduced cost base of their original TOF 4 units and which reflects the merger ratio (1.0:0.410) for the consolidation of the units (subsection 112-25(4) of the ITAA 1997).

Capital distribution

15. The capital distribution to the owners of consolidated TOF 4 units resulted in CGT event E4 (section 104-70 of the ITAA 1997) happening in respect of each of their consolidated TOF 4 units.

16. The consequences for each unitholder depend upon the cost base of each of their consolidated TOF 4 units and other non-assessable payments made by TOF 4 during the income year.

Issue of new TPF 12 units and new TCGL shares

17. The first element of the cost base and reduced cost base of:

- each new TPF 12 unit acquired under the arrangement is 49 cents; and
- each new TCGL share acquired under the arrangement is 0.01 cent,

(sections 110-25 and 110-55 of the ITAA 1997).

18. Each new TPF 12 unit and new TCGL share was acquired by TOF 4 unitholders at the time they were issued (section 109-10 of the ITAA 1997).

19. The issue of new TPF 12 units and new TCGL shares did not result in CGT event H2 (section 104-155 of the ITAA 1997) happening to TOF 4 unitholders.

20. The issue of new TPF 12 units and new TCGL shares to owners of consolidated TOF 4 units does not have any consequences for TOF 4 unitholders under the direct value shifting rules in Division 725 of the ITAA 1997.

Stapling of securities

21. No CGT event in Division 104 of the ITAA 1997 happened as a result of the stapling of each consolidated TOF 4 unit to a new TPF 12 unit and a new TCGL share.

Explanation

Consolidation of TOF 4 units

22. Subsection 112-25(4) of the ITAA 1997 provides that, if two or more CGT assets are merged into a single asset and the beneficial ownership of the old and new assets remains the same, the merger does not result in the happening of a CGT event. It also provides that each element of the cost base and reduced cost base, respectively, of the new asset (at the time of merging) is the sum of the corresponding elements of each original asset.

23. Accordingly, the consolidation of original TOF 4 units did not result in a CGT event happening to TOF 4 unitholders.

24. Each TOF 4 unitholder is taken to have a cost base and reduced cost base for their consolidated TOF 4 units based on the cost base and reduced cost base, respectively, of their original TOF 4 units and which reflects the merger ratio (1.0:0.410).

25. Subsection 109-5(1) of the ITAA 1997 generally provides that a CGT asset is acquired when it commences to be owned by someone.

26. If one or more consolidated TOF 4 units can be formed from a parcel of original TOF 4 units that all have the same acquisition date, the TOF 4 unitholder is taken to have acquired those consolidated TOF 4 units on the date of acquisition of the original TOF 4 units. Where a fraction of a unit was on consolidation rounded up to a whole number, that part rounded up is taken to have been acquired on the earliest acquisition date of the original TOF 4 units held by the unitholder.

Capital distribution

27. Under section 104-70 of the ITAA 1997, CGT event E4 happens if the trustee of a trust makes a payment to a unitholder in respect of their unit in the trust and some or all of the payment is not included in the unitholder's assessable income.

28. The consequences of CGT event E4 happening are determined on an annual basis, that is, having regard to all such CGT events that happen to a unit during an income year (subsection 104-70(3) of the ITAA 1997).

29. If CGT event E4 happens during an income year, a unitholder will make a capital gain if the total of the non-assessable payments made by the trustee during the income year in respect of a unit exceeds the cost base of the unit (subsection 104-70(4) of the ITAA 1997).

30. However, if the sum of the non-assessable payments is not more than the cost base of the unit, the cost base and reduced cost base are reduced by that amount (subsection 104-70(6) of the ITAA 1997).

31. The distribution paid by TOF 4 on the implementation date of 49.01 cents per consolidated TOF 4 unit will not be included in the assessable income of the TOF 4 unitholders. Therefore, the distribution by TOF 4 under the stapling arrangement will result in CGT event E4 happening in respect of each consolidated TOF 4 unit.

32. Accordingly, the cost base and reduced cost base of each consolidated TOF 4 unit will be reduced by 49.01 cents. A TOF 4 unitholder whose cost base for the consolidated TOF 4 unit is less than 49.01 cents will make a capital gain to the extent of the difference. It is not expected that any TOF 4 unitholder will make a capital gain in respect of the proposed capital distribution.

Issue of new TPF 12 units and new TCGL shares

33. Sections 110-25 and 110-55 of the ITAA 1997 provide that the first element of the cost base and reduced cost base, respectively, of a CGT asset is the money paid in respect of its acquisition.

34. Owners of consolidated TOF 4 units are taken to have paid 49 cents for each new TPF 12 unit and 0.01 cent for each new TCGL share (as a result of the capital distribution being applied by TMIL on the unitholders' behalf).

35. Accordingly, the first element of the cost base and reduced cost base of each new TPF 12 unit is 49 cents and each new TCGL share is 0.01 cent.

36. If a company issues or allots equity interests or a trustee issues units in circumstances where no contract is entered into in respect of the acquisition, the equity interest and units are taken to have been acquired at the time of issue or allotment (items 2 and 3 in the table in section 109-10 of the ITAA 1997).

37. Accordingly, an owner of a consolidated TOF 4 unit acquired each new TPF 12 unit and new TCGL share on the implementation date.

CGT event H2

38. CGT event H2 in section 104-155 will only happen to an act, transaction or event if no other CGT event happens to it (section 102-25 of the ITAA 1997).

39. The issue of new TPF 12 units and new TCGL shares represented a return of capital to TOF 4 unitholders and CGT event E4 happens.

40. In addition, paragraph 104-155(5)(c) provides that CGT event H2 does not happen when a company issues shares in itself. A similar exception exists in paragraph 104-155(5)(d) for the issue of units by a unit trust.

41. Therefore, CGT event H2 did not happen as a result of the issue of new TPF 12 units and new TCGL shares to TOF 4 unitholders.

Application of Division 725

42. Division 725 of the ITAA 1997 may apply where there is a direct value shift under a scheme involving equity or loan interests in an entity. For there to be consequences under the rules for a particular equity or loan interest that is held on capital account, there are a number of qualifying conditions in Subdivisions 725-A and 725-D of the ITAA 1997 that need to be satisfied.

43. Having regard to:

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

it is considered that, for the purposes of section 727-360 of the ITAA 1997, TOF 4 was a fixed trust for the period starting when the scheme is entered into and ending when it is carried out.

44. Based on the information provided regarding the ownership of equity and loan interests in TOF 4 during the scheme period it is considered that the qualifying conditions are not satisfied for the interests in TOF 4. Therefore there are no direct value shifting consequences for the TOF 4 unitholders in respect of the arrangement.

Stapling of securities

45. The effect of the stapling is to apply restrictions to the transferability of the individual securities that together make up the Trafalgar Corporate Group stapled security. Each individual security (that is, consolidated TOF 4 unit, new TPF 12 unit and new TCGL share) retains its legal character without any change in beneficial ownership. There was no variation to the rights or obligations attaching to, or to the beneficial ownership of, the individual securities comprising the Trafalgar Corporate Group stapled security as a consequence of stapling.

46. Therefore, no CGT event in Division 104 of the ITAA 1997 happened as a consequence of the stapling of each consolidated TOF 4 unit to each new TPF 12 unit and new TCGL share.

Detailed contents list

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

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Commissioner of Taxation

7 September 2005

CR 2005/69

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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

Subject references:

- arrangements
- base adjustments
- capital distribution rights
- CGT cost base
- CGT Events E1-E9 – Trusts
- CGT share value shifting
- cost
- cost base adjustments for value fixed entitlements
- indirect value shifting rules
- shift
- share consolidations and splits
- stapled companies
- stapled structure
- stapled trusts
- time of CGT event
- trusts
- value shifting – entity interests

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 102-25
- ITAA 1997 Div 104
- ITAA 1997 104-70
- ITAA 1997 104-70(3)
- ITAA 1997 104-70(4)
- ITAA 1997 104-70(6)
- ITAA 1997 104-155
- ITAA 1997 104-155(5)(c)
- ITAA 1997 104-155(5)(d)
- ITAA 1997 109-5(1)
- ITAA 1997 109-10
- ITAA 1997 110-25
- ITAA 1997 110-55
- ITAA 1997 112-25
- ITAA 1997 112-25(4)
- ITAA 1997 Div 725
- ITAA 1997 Subdiv 725-A
- ITAA 1997 Subdiv 725-D
- ITAA 1997 727-360
- Copyright Act 1968
- TAA 1953 Pt IVA

ATO references

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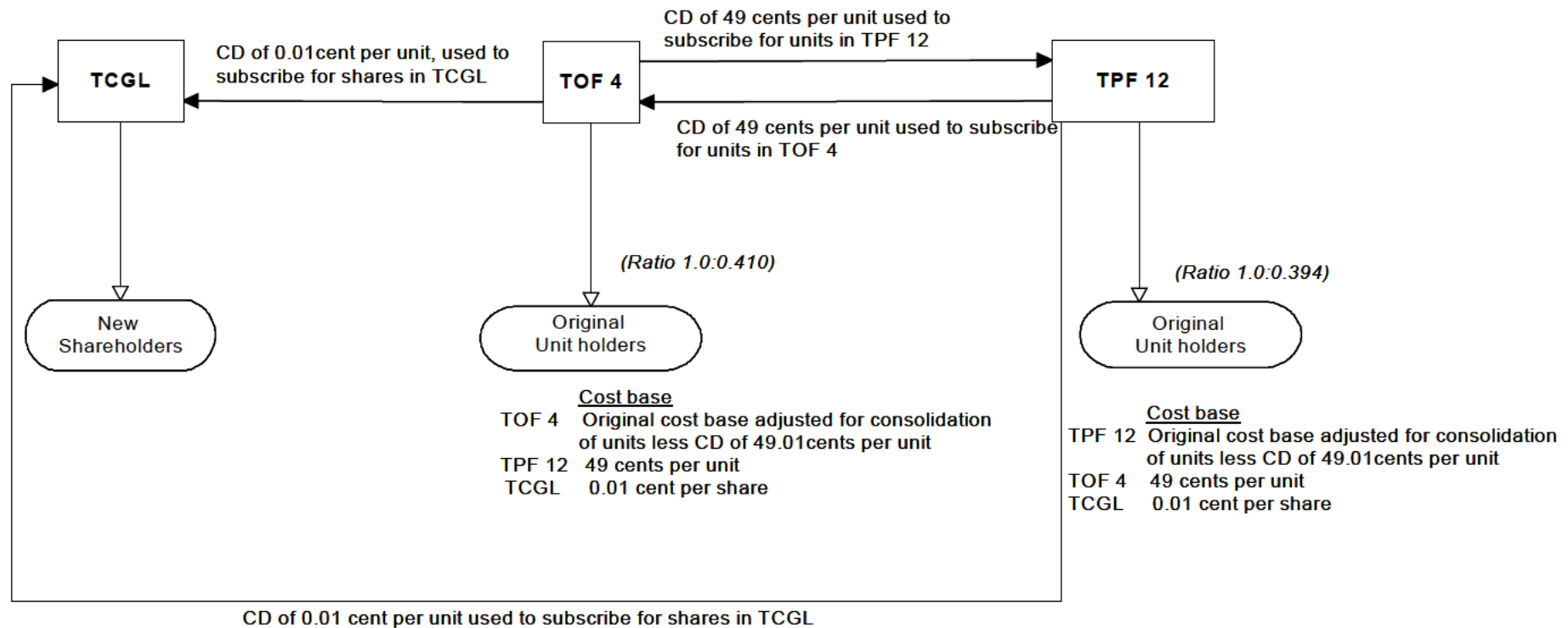
ATOLaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT events E1 to E9 – trusts
Income Tax ~~ Capital Gains Tax ~~ cost base and reduced cost base
Income Tax ~~ Capital Gains Tax ~~ value shifting

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 Trafalgar Corporate Group Merger Explanatory Memorandum in relation to a proposal to staple the shares of TCGL and the units of TOF 4 and TPF 12</i> | |
| merger ratio | Merger ratio (for the consolidation of an existing TOF 4 unit, the merger ratio is 1.0:0.410) |
| implementation date | Implementation Date |
| stapling distribution | Stapling Distribution |
| stapling record date | Stapling Record Date |
| <i>Other terms used in this Ruling have the following meaning</i> | |
| consolidated TOF 4 unit | a consolidated TOF 4 Unit, as that term is used in the explanatory memorandum, that a unitholder owns immediately after the time when their existing TOF 4 units are merged on the implementation date |
| new TPF 12 unit | A TPF 12 unit issued to an existing owner of a consolidated TOF 4 unit on the implementation date |
| new TCGL share | A TCGL share issued to an existing owner of a consolidated TOF 4 unit on the implementation date |
| original TOF 4 unit | TOF 4 unit before consolidation |
| Trafalgar Corporate Group stapled security | Trafalgar Corporate Group stapled security consisting of one consolidated TOF 4 unit, one new TPF 12 unit and one new TCGL share |

Appendix B

TRAFALGAR STAPLED GROUP (Implementation date - 20 July 2005)



TCGL: Trafalgar Corporate Group Ltd.
TOF 4: Trafalgar Opportunity Fund No. 4
TPF 12: Trafalgar Platinum Fund No. 12
CD: Capital distribution

All subscriptions in the other two entities are made on behalf of the securityholders.