



CR 2006/2 - Income tax: Macquarie Goodman Management Limited - Macquarie Goodman Group merger stapling arrangement

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Class Ruling

Income tax: Macquarie Goodman Management Limited – Macquarie Goodman Group merger stapling arrangement

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📌 This Ruling provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant taxation provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state the law how the current law applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant taxation provision(s)

2. The relevant taxation provisions dealt with in this Ruling are:
- section 45B of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 45C of the ITAA 1936;
 - Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 104-135 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;
- Division 725 of the ITAA 1997; and
- Subdivision 727-E of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies is the owners of ordinary shares in Macquarie Goodman Management Limited (MGM) who:

- participated in the scheme that is the subject of this Ruling;
- hold their MGM shares on capital account; 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 scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 10 to 13.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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 ended 30 June 2005. The scheme was completed within that income year.

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 provisions ruled upon, to all entities within the specified class who entered into the scheme during the term of the Ruling.

Scheme

10. The scheme that is the subject of the Ruling is described below. This description is based on, and includes reference to, the following documents:

- Class Ruling request from Greenwoods & Freehills dated 1 December 2004;
- Explanatory Memorandum in relation to a proposal to staple the units of Macquarie Goodman Industrial Trust (MGI), of which Macquarie Goodman Funds Management Limited (MGF) is the trustee, and the shares of MGM;
- notes of meetings between the Australian Taxation Office, Greenwoods & Freehills and representatives of MGM and MGI from 8 November 2004 to 14 April 2005; and
- e-mails from Greenwoods & Freehills from 8 June 2004 to 14 April 2005, inclusive, and 21 December 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 2.

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

11. On 20 October 2004, MGF and MGM announced a proposal to merge MGI and MGM to form the Macquarie Goodman Group (MGG). The merger was achieved by stapling MGM shares to MGI units.

12. The merger was implemented by the following steps, all of which happened on the implementation date (9 February 2005) to MGM shareholders who held shares on the stapling record date (8 February 2005).

- **Return of capital of \$0.10 per original MGM share**

MGM made a return of capital of \$0.10 per original MGM share to each MGM shareholder.

- **Issue of new MGI units**

MGM, on behalf of each MGM shareholder, applied the return of capital to subscribe for new MGI units (at a subscription price of \$0.10). Each owner of original MGM shares received one new MGI unit for each of their original MGM shares.

- **Stapling of units and shares**

Each original MGM share was stapled to one new MGI unit.

13. After stapling, the MGM shares and MGI units remain separate and distinct assets. However, they can only be traded as one security (MGM stapled security) on the Australian Stock Exchange.

Ruling

Return of capital

14. The return of capital of \$0.10 to the owners of each original MGM share resulted in CGT event G1 (section 104-135 of the ITAA 1997) happening in respect of each of their original MGM shares.

15. The Commissioner will not make a determination (under section 45B of the ITAA 1936) that section 45C of the ITAA 1936 applies to the whole, or any part, of the return of capital to the owners of original MGM shares.

Issue of new MGI units

16. The first element of the cost base and reduced cost base of each new MGI unit acquired by each MGM shareholder under the scheme will be \$0.10 (sections 110-25 and 110-55, respectively, of the ITAA 1997).

17. Each new MGI unit was acquired by MGM shareholders at the time it was issued (section 109-10 of the ITAA 1997).

18. Neither the return of capital, nor the issue of new MGI units, resulted in CGT event H2 (section 104-155 of the ITAA 1997) happening to MGM shareholders.

19. The issue of new MGI units to owners of original MGM shares did not have any consequences for MGM shareholders under the direct value shifting rules in Division 725 of the ITAA 1997.

Stapling of securities

20. No CGT event in Division 104 of the ITAA 1997 happened as a result of the stapling of each original MGM share to a new MGI unit.

Commissioner of Taxation

18 January 2006

Appendix 1 – Explanation

❶ *This Appendix 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.*

Return of capital

21. Under section 104-135 of the ITAA 1997, CGT event G1 happens if a company makes a payment to a shareholder in respect of their share in the company and some or all of the payment is not a dividend or an amount that is taken to be a dividend under section 47 of the ITAA 1936 (non-assessable payment).

22. A shareholder will make a capital gain as a result of CGT event G1 if the non-assessable payment made by the company during the income year in respect of a share exceeds the cost base of the share, and the cost base of each share will be reduced to nil (section 104-135(3) of ITAA 1997).

23. If the non-assessable payment is not more than the cost base of the share, the cost base and reduced cost base are reduced by that amount (section 104-135(4) of ITAA 1997).

24. The return of capital of \$0.10 per MGM share by MGM on the implementation date was not a dividend or an amount that is taken to be a dividend under section 47 of the ITAA 1936. Therefore, the return of capital by MGM under the stapling arrangement resulted in CGT event G1 happening in respect of each original MGM share.

25. Accordingly, the cost base and reduced cost base of each original MGM share will be reduced by \$0.10. A MGM shareholder whose cost base for their original MGM share is less than \$0.10 will make a capital gain to the extent of the difference, and the cost base will be reduced to nil.

Application of section 45B

26. Section 45B of the ITAA 1936 applies where certain capital payments, including a return of capital, are paid to shareholders in substitution for dividends. Specifically, the provision applies where:

- there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936);
- under the scheme a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936); and

- having regard to the relevant circumstances of the scheme, it would be considered that the person, or one of the persons, entered into the scheme or carried out the scheme, or any part of the scheme for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

27. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 are satisfied, the requisite purpose of enabling the shareholders to obtain a tax benefit by way of a capital distribution is not present. The purpose of the distribution was to facilitate the shareholders' acquisition of units in MGI.

28. The relevant circumstances of this scheme include:

- the capital distribution cannot be said to be attributable to the realised or unrealised profits of MGM (paragraph 45B(8)(a) of the ITAA 1936);
- this return of capital was not a payment in substitution for a dividend (paragraph 45B(8)(b));
- most shareholders were Australian residents and all shares were acquired after 19 September 1985 (paragraphs 45B(8)(d) and 45B(8)(e));
- the cost bases of the shares prior to the capital reduction were not substantially less than the value of the benefit provided by the return of capital (paragraph 45B(8)(f));
- the proportional interests held by the shareholders after the distribution of capital was the same as that which would have been held had an equivalent dividend been paid instead of the capital benefit (paragraph 45B(8)(h)); and
- the return of capital applied to all shareholders equally and was conditional on the sum being applied to acquire units in MGI. MGM was able to justify its need for less share capital (paragraph 45B(8)(k)).

29. Having regard to the relevant circumstances outlined in paragraph 28, on balance it cannot be concluded that either MGM or the shareholders entered into or carried out the scheme for the purpose, not being an incidental purpose, of enabling such shareholders to obtain a tax benefit.

30. Therefore, section 45B of the ITAA 1936 will not apply to the scheme and the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the return of capital to shareholders. It is therefore considered that the capital distribution will not be assessable as a dividend under the ITAA 1936.

Issue of new MGI units

31. 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.

32. Owners of original MGM shares are taken to have paid \$0.10 for each new MGI unit (as a result of the return of capital being applied by MGM on behalf of the shareholders). Accordingly, the first element of the cost base and reduced cost base of each new MGI unit acquired by MGM shareholders under the scheme is \$0.10.

33. If a trustee issues units in circumstances where no contract is entered into in respect of the acquisition, the units are taken to have been acquired at the time of issue (item 3 in the table in section 109-10 of the ITAA 1997). Accordingly, owners of original MGM shares acquired each new MGI unit on the implementation date.

CGT event H2

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

35. The issue of new MGI units represented a return of capital to MGM shareholders and CGT event G1 happened.

36. In addition, paragraph 104-155(5)(d) of ITAA 1997 provides that CGT event H2 does not happen when the trustee of a unit trust issues units in the trust.

37. Therefore, CGT event H2 did not happen as a result of the return of capital or the issue of new MGI units to MGM shareholders.

Application of Division 725

38. Division 725 of the ITAA 1997 may apply where there is a direct value shift under a scheme involving equity interests in an entity. For Division 725 to have consequences for an equity interest, paragraph 725-50(b) requires, amongst other things, that the 'controlling entity test' be satisfied.

39. The 'controlling entity test' is satisfied for value shifting purposes if an entity (the controller) controls the target entity at some time during the period starting when the scheme is entered into and ending when the scheme has been carried out (section 725-55 of the ITAA 1997).

40. Subdivision 727-E of the ITAA 1997 sets out the circumstances in which an entity will be regarded as controlling another entity for value shifting purposes.

41. As MGM is a company, section 727-355 of ITAA 1997 contains the relevant tests for whether an entity controls MGM for value shifting purposes. On the basis of information provided regarding the beneficial ownership of MGM immediately before and after the scheme it is considered that there is no entity that would be regarded as controlling MGM for value shifting purposes under the tests in section 727-355 during this period.

42. Therefore, as the threshold requirement in paragraph 725-50(b) of the ITAA 1997 is not satisfied, Division 725 can have no consequences for the MGM shareholders in respect of the scheme.

Stapling of securities

43. The effect of stapling is to apply restrictions to the transferability of the individual securities that together make up the MGG stapled security. Each individual security (that is, original MGM share and new MGI unit) retains its legal character without any change in beneficial ownership. There was no variation to the rights or obligations attaching to, or the beneficial ownership of, the individual securities comprising the MGG stapled security as a consequence of stapling.

44. Therefore, no CGT event in Division 104 of the ITAA 1997 happened as a consequence of the stapling of each original MGM share to each new MGI unit.

Appendix 2 – Glossary of terms

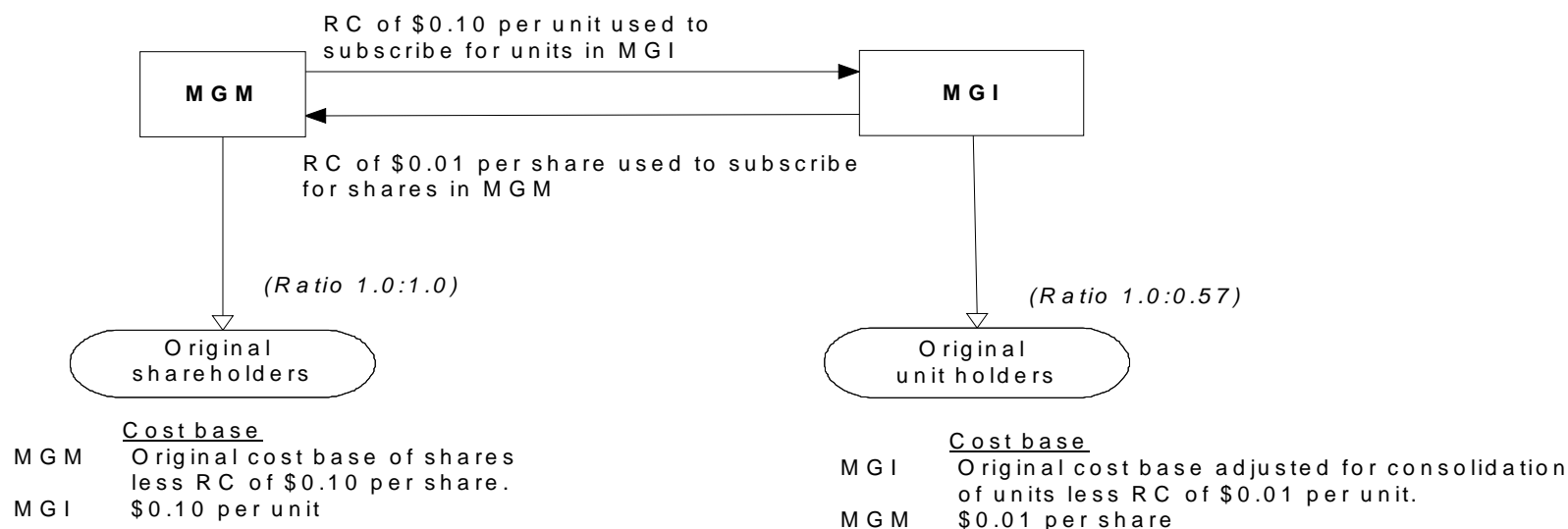
45. The following is a glossary of terms for this Ruling:

<i>Ruling Terminology</i>	<i>Meaning</i>
<i>Certain terms used in this Ruling have the same meaning as corresponding terms in The Macquarie Goodman Group Explanatory Memorandum in relation to a proposal to staple the shares of MGM and the units of MGI</i>	
implementation date	Implementation (9 February 2005)
stapling record date	Stapling Record (8 February 2005)
<i>Other terms used in this Ruling have the following meaning</i>	
original MGM share	MGM share at the stapling record date
new MGI unit	a MGI unit issued to an existing owner of an original MGM share on the implementation date
MGG stapled security	Macquarie Goodman Group stapled security consisting of one consolidated MGI unit and one new MGM share

Appendix 3 – Diagram

46. The following is a diagrammatical summary of the events described in this Ruling:

MACQUARIE GOODMAN GROUP (Implementation date - 9 February 2005)



MGM: Macquarie Goodman Management Limited
MGI: Macquarie Goodman Industrial Trust
RC: Return of Capital

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

The consolidation of the units occurs prior to the return of capital.

Appendix 4 – Detailed contents list

47. The following is a detailed contents list for this ruling:

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Reference

<i>Previous draft:</i>	- ITAA 1936 45B(2)(c)
Not previously issued as a draft	- ITAA 1936 45B(3)
	- ITAA 1936 45B(8)(a)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 45B(8)(b)
CR 2006/1	- ITAA 1936 45B(8)(d)
	- ITAA 1936 45B(8)(e)
	- ITAA 1936 45B(8)(f)
<i>Subject references:</i>	- ITAA 1936 45B(8)(h)
- Capital distribution rights	- ITAA 1936 45B(8)(k)
- Capital gains	- ITAA 1936 45C
- CGT cost base	- ITAA 1936 47
- CGT events	- ITAA 1997 102-25
- CGT reduced cost base	- ITAA 1997 Div 104
- CGT share value shifting	- ITAA 1997 104-135
- cost base adjustments	- ITAA 1997 104-135(3)
- fixed trusts	- ITAA 1997 104-135(4)
- return of capital on shares	- ITAA 1997 104-155
- share consolidations	- ITAA 1997 104-155(5)(d)
- stapled companies	- ITAA 1997 109-10
- stapled structure	- ITAA 1997 110-25
- stapled trusts	- ITAA 1997 110-55
- time of CGT event	- ITAA 1997 Div 725
- value shifting - entity interests	- ITAA 1997 725-50(b)
direct value shifting rules	- ITAA 1997 725-55
	- ITAA 1997 Subdiv 727-E
<i>Legislative references:</i>	- ITAA 1997 727-355
- ITAA 1936 6(1)	- Copyright Act 1968
- ITAA 1936 45B	- TAA 1953
- ITAA 1936 45B(2)(a)	
- ITAA 1936 45B(2)(b)	

ATO references

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