


# ***CR 2008/92 - Income tax: exchange of units in Connell Wagner Holdings Trust for shares in Connell International Group Limited***

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## Class Ruling

# Income tax: exchange of units in Connell Wagner Holdings Trust for shares in Connell International Group Limited

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Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
<b>What this Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>9</b>
<b>Scheme</b>	<b>10</b>
<b>Ruling</b>	<b>30</b>
<b>NOT LEGALLY BINDING SECTION:</b>	
<b>Appendix 1:</b>	
<b><i>Explanation</i></b>	<b>33</b>
<b>Appendix 2:</b>	
<b><i>Detailed contents list</i></b>	<b>43</b>

### **① This publication provides you with the following level of protection:**

This publication (excluding appendixes) 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 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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

### Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 45B of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45C of the ITAA 1936;
- Subdivision 124-A of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- Subdivision 124-G of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

## **Class of entities**

3. The class of entities to which this Ruling applies is the entities who:
- (a) hold ordinary or special units in Connell Wagner Holdings Trust (CWHT);
  - (b) exchange their units in CWHT for shares in Connell International Group Ltd (CIGL) under the scheme described in paragraphs 10 to 29 of this Ruling; and
  - (c) are residents of Australia for the purposes of subsection 6(1) of the ITAA 1936 at the time of the disposal of their CWHT units.
4. In this Ruling, the entities belonging to this class are referred to as 'CWHT unit holders'.

## **Qualifications**

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. 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, and/or documents referred to in paragraphs 10 to 29 of this Ruling.
7. 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

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9. This Ruling applies from 1 July 2008 to 30 June 2009. The Ruling continues to apply after 30 June 2009 to the CWHT unit holders who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to CWHT unit holders to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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10. The following description of the scheme is based on information provided by Ernst & Young (the applicant for this Ruling). The documents include:

- Class Ruling application dated 10 September 2008 from Ernst & Young on behalf of both the ordinary and special unit holders of CWHT;
- Prospectus dated 10 November 2008;
- Independent Expert's Report dated 7 November 2008;
- the trust deed of CWHT (the Trust Deed); and
- the Constitution of CIGL.

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

### Overview

11. The scheme that is the subject of this Ruling involves CWHT interposing a new company, CIGL, between itself and its unit holders (the Restructure).

### CWHT

12. CWHT is a public trading trust for Australian income tax purposes under Division 6C of Part III of the ITAA 1936. It is the ultimate parent of the Connell Wagner Group. The Connell Wagner Group conducts a multi-disciplinary consulting business both in Australia and overseas. The business includes planning, surveying, engineering, scientific and other services in relation to buildings, transport, power, mining, water, the environment and community projects.

13. CWHT made the choice under section 703-50 to form the Connell Wagner tax consolidated group from 1 July 2003.

14. The Trustee of CWHT is Connell Wagner Group Holdings Pty Ltd (the Trustee).

15. As at 10 November 2008 CWHT had on issue:

- ordinary units held by senior executive employees of Connell Wagner Pty Ltd (and/or their nominated unit holders); and
- special units held by executive employees of either Connell Wagner Pty Ltd or one of various overseas Connell Wagner entities (and/or their nominated unit holders).

16. As at 3 December 2008, certain CWHT unit holders who hold special units have given notice of their resignation the Connell Wagner Group. The units held by these unit holders are in the process of being redeemed in accordance with Connell Wagner's procedures for departing employees.

17. Under the terms of the Trust Deed:

- each ordinary unit entitles its holder to an equal share of the income and capital of CWHT as well as the right to vote at a meeting of unit holders; and
- each special unit has the same rights and conditions as an ordinary unit, except that there are no voting rights attached to it.

## **The Restructure**

18. CIGL was incorporated on 22 October 2008 in Victoria as a public company limited by shares. At the time of its incorporation, its issued capital comprised one 'founder' share which was issued to the Group Executive Chairman of Connell Wagner.

19. On 10 November 2008 CIGL lodged a Prospectus with the Australian Securities and Investments Commission:

- inviting holders of ordinary units to offer to exchange those units for 'A class' shares in CIGL on a one-for-one basis; and
- inviting holders of special units to offer to exchange those units for 'B class' shares in CIGL on a one-for-one basis.

20. Each class of shares in CIGL will confer materially the same rights as the corresponding class of units in CWHT. Specifically:

- 'A class' shares will confer rights to dividends, capital distributions and voting rights; and
- 'B class' shares will confer rights to dividends and capital distributions but do not carry the right to vote.

21. Under the terms of the invitation set out in the Prospectus, CIGL will only accept the offers made by unit holders subject to the satisfaction of certain conditions (the restructure conditions). These include, relevantly, a 'Minimum Application Condition' under which CIGL will not accept the applications unless there are applications for shares under the prospectus restructure offer from unit holders holding 90% or more of each class of units on issue as at the closing date under the prospectus (being 3 December 2008) and that there is no withdrawal of the applications before the record date under the prospectus for participation by unit holders. The record date will be the day on which the restructure conditions are satisfied.

22. As at the record date, 100% of unit holders who were eligible to participate will have offered to transfer all their units to CIGL in exchange for shares in CIGL.

23. Unit holders who are not employed by the Connell Wagner Group on the scheme's record date will have their units redeemed in accordance with Connell Wagner's current practice for departing employees. These unit holders are not eligible to participate in the exchange.

24. Following the satisfaction of the Minimum Application Condition, and other conditions set out in the Prospectus, the following events will take place, in sequence:

- (a) the Trustee will consent to the transfer of the unit holders' units to CIGL;
- (b) CIGL will accept the offers made by unit holders; and
- (c) Unit holders will transfer their units to CIGL and, in exchange, CIGL will issue shares to the unit holders.

25. Immediately after the Restructure, CIGL will hold all of the issued units in CWHT.

### **Purpose of the Restructure**

26. CWHT has advised that the purpose of the Restructure is to provide the Connell Wagner Group a more commercial, robust and flexible ownership structure that will allow the Group to adapt and change more readily in response to developments within its geographic markets and regulatory environment, and thereby assist the Group with its strategic growth objectives.

### **Other matters**

27. All of the CWHT unit holders hold their units on capital account.

28. Within 28 days of all the units in CWHT being transferred to CIGL, CIGL will make the choice under subsection 124-380(5) that the Connell Wagner tax consolidated group is to continue in existence.

29. All of the units in CWHT currently on issue were acquired on or after 20 September 1985.

## Ruling

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### Roll-over under Subdivision 124-G

30. The CWHT unit holders will be taken to have chosen the roll-over under subsection 124-360(2) in relation to the exchange.

31. The consequences under Subdivision 124-G for the CWHT unit holders will be as follows:

- (a) any capital gain or capital loss that is made on the disposal of the units in exchange for CIGL shares is disregarded (subsection 124-10(2)); and
- (b) the first element of the cost base and reduced cost base of each CIGL share acquired under the exchange is equal to the cost base of the corresponding unit for which it was exchanged (subsection 124-10(3)).

### Anti-avoidance provision

32. 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 capital benefits received by the CWHT unit holders.

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**Commissioner of Taxation**

17 December 2008

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## **Appendix 1 – Explanation**

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**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.*

### **Capital gains tax**

33. The significant Capital gains tax consequence of the scheme is the availability of a replacement asset roll-over under Subdivision 124-G. Relevantly, it allows (or requires) a shareholder in a company to disregard a capital gain or capital loss from a share that is disposed of under a reorganisation of the company's affairs if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

34. CWHT is not a company. It is a trust taxed under Division 6C of Part III of the ITAA 1936 (this Division applies in respect of certain public trading trusts defined in section 102R of the ITAA 1936).

35. For certain purposes of the ITAA 1936 and ITAA 1997 those trusts are treated as companies and units in them are treated as shares. In particular, section 102T of the ITAA 1936 sets out the circumstances when a unit in a public trust will be treated as a share. Those circumstances do not extend to Subdivision 124-G of the ITAA 1997 and, in particular, its requirement that roll-over is only available where shares in a company are exchanged for shares in another company (subsection 124-360 of the ITAA 1997). However, there is a different approach for a public trading trust which chooses to form a consolidated group. Where such a choice has been made, Subdivision 713-C of the ITAA 1997 applies for the purposes of various provisions of the ITAA 1936 and ITAA 1997 to treat the trust as a company and its units as shares. These provisions include, relevantly, Subdivision 124-G of the ITAA 1997.

36. As CWHT has made the choice to form a consolidated group, a unit in CWHT is treated as a share for the purposes of determining the availability of roll-over under Subdivision 124-G for CWHT unit holders.

37. It follows that CWHT unit holders will be taken to have chosen the roll-over under subsection 124-360(2) because:

- (a) all unit holders that are eligible to participate in the exchange, will dispose of their units in CWHT in exchange for shares in CIGL;
- (b) the exchange satisfies all of the conditions in subsections 124-365(1) to 124-365(3), subsections 124-380(1) to 124-380(3) and subsection 124-380(5);

- (c) the CWHT unit holders are all residents at the time of disposing of their units in CWHT under the exchange as required by paragraph 124-365(4)(a);
- (d) immediately before the completion time, CWHT will be the head entity of the Connell Wagner income tax consolidated group; and
- (e) immediately after the completion time, CIGL will be the head entity of the Connell Wagner income tax consolidated group.

## **Anti-avoidance provision**

38. Section 45B of the ITAA 1936 applies where certain capital payments are paid to shareholders in substitution for dividends. In broad terms, section 45B applies where:

- (i) 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);
- (ii) 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
- (iii) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

39. Under the present scheme, each of the CWHT unit holders will receive CIGL shares which will constitute a capital benefit.

40. If the amount of tax that would be payable at a later time (as a result of the roll-over under Subdivision 124-G of the ITAA 1997) by a participating unit holder is less than it would be payable if the capital benefit had been a dividend, then the participating unit holder will obtain a tax benefit in accordance with subsection 45B(9) of the ITAA 1936.

41. However, under the present scheme, the requisite purpose of enabling the participating unit holder to obtain a tax benefit is not present. Having regard to the 'relevant circumstances' of the scheme, as set out in subsection 45B(8) of the ITAA 1936, it is apparent that none of the CWHT unit holders who is to enter into or carry out the scheme, or any part of it, will do so for the requisite purpose of enabling them to obtain a tax benefit.

42. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit received by any of the CWHT unit holders.

## **Appendix 2 – Detailed contents list**

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43. The following is a detailed contents list for this Ruling:

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant provision(s)	2
Class of entities	3
Qualifications	5
<b>Date of effect</b>	<b>9</b>
<b>Scheme</b>	<b>10</b>
Overview	11
CWHT	12
The Restructure	18
Purpose of the Restructure	26
Other matters	27
<b>Ruling</b>	<b>30</b>
Roll-over under Subdivision 124-G	30
Anti-avoidance provision	32
<b>Appendix 1 – Explanation</b>	<b>33</b>
Capital gains tax	33
Anti-avoidance provision	38
<b>Appendix 2 – Detailed contents list</b>	<b>43</b>

## References

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- Previous draft:*
- ITAA 1936 45B(8)
- Not previously issued as a draft
- ITAA 1936 45B(9)
  - ITAA 1936 45C
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1936 Pt III Div 6C
  - ITAA 1936 102R
  - ITAA 1936 102T
- Subject references:*
- ITAA 1997
  - ITAA 1997 Subdiv 124-A
  - capital benefit - ITAA 1997 124-10(2)
  - CGT replacement asset - ITAA 1997 124-10(3)
  - rollover - ITAA 1997 Subdiv 124-G
  - CGT roll-over relief - ITAA 1997 124-360
  - consolidated group - ITAA 1997 124-360(2)
  - interposed companies - ITAA 1997 124-365(1)
  - public trading trusts - ITAA 1997 124-365(2)
  - unit trust restructuring - ITAA 1997 124-365(3)
  - unlisted unit trusts - ITAA 1997 124-365(4)(a)
- Legislative references:*
- ITAA 1997 124-380(1)
  - ITAA 1997 124-380(2)
  - ITAA 1997 124-380(3)
  - ITAA 1997 124-380(5)
  - ITAA 1936 - ITAA 1997 703-50
  - ITAA 1936 6(1) - ITAA 1997 Subdiv 713-C
  - ITAA 1936 45B - TAA 1953
  - ITAA 1936 45B(2)(a) - Copyright Act 1968
  - ITAA 1936 45B(2)(b)
  - ITAA 1936 45B(2)(c)
  - ITAA 1936 45B(3)
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### ATO references

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