


***CR 2009/26 - Income tax: scrip for scrip roll-over:
exchange of Interests in the Premium Equity Fund for
units in the Common Fund No. 3***

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Class Ruling

Income tax: scrip for scrip roll-over: exchange of Interests in the Premium Equity Fund for units in the Common Fund No. 3

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❶ 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

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions 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 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies consists of the Members of the Premium Equity Fund (PEF) who:

- are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* on the date that they disposed of their Interests in the PEF under the scheme to which this Ruling relates; and
- held their Interests in the PEF on capital account on that date.

In this Ruling, a Member of the PEF belonging to this class of entities is referred to as a 'Member of the PEF'.

Qualifications

4. 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 8 to 16 of this Ruling.

5. 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

7. This Ruling applies from 1 July 2008 to 30 June 2009. The Ruling continues to apply after 30 June 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers 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

8. The following description of the scheme is based on information provided by the applicant, Deloitte Touche Tohmatsu. The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application, dated 6 October 2008; and
- Correspondence with the applicant between 16 December 2008 and 7 April 2009.

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

9. State Trustees Ltd (State Trustees) is a State-owned company within the meaning of the *State Owned Enterprises Act 1992* (Vic). It is the successor in law of the State Trust Corporation of Victoria which, pursuant to the *State Trust Corporation of Victoria Act 1987* (Vic), replaced the Public Trustee of Victoria.

10. From 1 July 1994, pursuant to the *State Trustees (State Owned Company) Act 1994* (Vic), it has been a company under the *Corporations Act 2001* and an authorised trustee company.

11. State Trustees is the trustee of Common Fund No. 3 (CF3).

12. STL Financial Services Ltd, a subsidiary of State Trustees, is the Responsible Entity of the PEF.

13. On 17 March 2009, Members of the PEF disposed of their Interests in the PEF to the Manager of the CF3. In exchange, they received units in the CF3. As a result, the Members of the PEF now own units in the CF3, and the Manager of the CF3 owns all of the Interests in the PEF.

14. The Members of the PEF acquired all of the Interests in the PEF after 20 September 1985.

15. The PEF did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those expressions in section 124-783.

16. For the purposes of subsection 124-781(4), both the PEF and the CF3 had at least 300 beneficiaries just before the implementation of the arrangement.

Ruling

CGT event A1 happens on the disposal of Interests in the PEF to the Manager of the CF3

17. CGT event A1 happens if there is a disposal of a CGT asset. This involves a change in the ownership of an asset from one entity to another. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (section 104-10).

18. The disposal of Interests in the PEF (and hence CGT event A1) happened when a Member of the PEF entered into a contract with the Manager of the CF3 for the disposal of their Interests in the PEF (paragraph 104-10(3)(a)), or if there was no contract, when they transferred their Interests in the PEF to the Manager of the CF3 (paragraph 104-10(3)(b)).

Capital gain or capital loss

19. A Member of the PEF will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an Interest in the PEF exceed its cost base. A Member of the PEF will make a capital loss if the capital proceeds from the disposal of an Interest in the PEF are less than its reduced cost base (subsection 104-10(4)).

Capital proceeds

20. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening was the market value of the property (the units in the CF3) received or entitled to be received in respect of the disposal of the Interests in the PEF. The market value of the property is worked out as at the time of CGT event A1 happening (the date when a Member of the PEF entered into a disposal contract, or if there was no contract, when they transferred their Interests in the PEF to the Manager of the CF3).

21. The Commissioner accepts that the market value of a CF3 unit at the time of CGT event A1 was \$0.7491 per unit. This was calculated by the Manager of the CF3 in accordance with the rules for calculating the issue price of a unit contained in the CF3 Constitution.

Availability of scrip for scrip roll-over if a capital gain is made

22. Subject to the qualification in paragraph 24 of this Ruling, a Member of the PEF who made a capital gain from the disposal of an Interest in the PEF to the Manager of the CF3 is eligible to choose scrip for scrip roll-over (section 124-781 and 124-785).

23. Scrip for scrip roll-over cannot be chosen if any capital gain a Member of the PEF made from their replacement units in the CF3 would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

24. The only capital proceeds received by a Member of the PEF was units in the CF3. Therefore, if a Member of the PEF chooses scrip for scrip roll-over, the capital gain they made upon the disposal of an Interest in the PEF to the Manager of the CF3 is disregarded completely (subsection 124-785(1)).

Discount capital gain

25. A Member of the PEF who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the Interests in the PEF must have been acquired by the Member of the PEF at least 12 months before their disposal to the Manager of the CF3.

Cost base of CF3 units***Scrip for scrip roll-over is not chosen***

26. Where scrip for scrip roll-over is not chosen, or cannot be chosen, by a Member of the PEF, the first element of the cost base and reduced cost base of each replacement CF3 unit is equal to the market value of the property (the Interests in the PEF) given in respect of acquiring each CF3 unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

Scrip for scrip roll-over is chosen

27. If a Member of the PEF chooses the roll-over, the first element of the cost base and reduced cost base of each replacement CF3 unit is worked out by reasonably attributing to it the cost base of the Interests in the PEF for which it was exchanged (subsections 124-785(2) and 124-785(4)).

Acquisition date of CF3 units

28. A Member of the PEF acquired the units in the CF3 which they received in exchange for their Interests in the PEF on the date when a contract was entered into, or if there was no contract, when the CF3 units are issued to them (item 3 of the table in section 109-10).

29. However, for the purpose of determining whether a capital gain made from any later disposal of their CF3 units is a discount capital gain, Members of the PEF who choose scrip for scrip roll-over are taken to have acquired their CF3 units when they acquired the original Interests in the PEF involved in the roll-over (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation

13 May 2009

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.*

Scrip for scrip roll-over – Subdivision 124-M

30. The tax consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

31. The significant tax consequence is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables the holder of an interest in a trust to disregard a capital gain from an interest in a trust that is disposed of as part of a takeover or merger if the holder of that interest receives a replacement interest in a trust in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

32. Subdivision 124-M contains a number of conditions for, and exceptions to, the holder of an interest in a trust being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- (a) units/interests are exchanged for units/interests in another trust;
- (b) entities have fixed entitlements to all of the income and capital of the original trust and the acquiring trust;
- (c) the exchange is in consequence of an arrangement;
- (d) conditions for the roll-over are satisfied;
- (e) further conditions, if applicable, are satisfied; and
- (f) exceptions to obtaining scrip for scrip roll-over are not applicable.

33. The scheme satisfies the requirements for the roll-over under Subdivision 124-M. Further, the scheme raises no novel issues of tax law interpretation and no further explanation of the application of those tax laws beyond that contained in the Ruling part of this document is necessary.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- scrip for scrip roll-over

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(a)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-781
 - ITAA 1997 124-781(4)
 - ITAA 1997 124-783
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - TAA 1953
 - Copyright Act 1968
 - Corporations Act 2001
 - State Trust Corporation of Victoria Act 1987 (Vic)
 - State Owned Enterprises Act 1992 (Vic)
 - State Trustees (State Owned Company) Act 1994 (Vic)
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ATO references

NO: 2009/4106

ISSN: 1445-2014

ATOLaw topic: Income tax – scrip for scrip roll-over