


CR 2011/6 - Income tax: demerger of Melbourne Property Syndicate Unit Trust

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Class Ruling

Income tax: demerger of Melbourne Property Syndicate Unit Trust

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ⓘ 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 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 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 115-30 of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- Division 125 of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is the unit holders in Melbourne Property Syndicate Unit Trust (Melbourne Unit Trust) who:

- (a) are listed on the register of Melbourne Unit Trust as at 1 February 2011 (Record Date);
- (b) are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* on the Record Date;
- (c) hold their units in Melbourne Unit Trust on capital account on the Record Date; and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their units in Melbourne Unit Trust.

(note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

In this Ruling, a person belonging to this class of entities is referred to as a 'unit holder'.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme as 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 9 to 23 of this Ruling.

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 from 1 February 2011 to 30 June 2011. The Ruling continues to apply after 30 June 2011 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

9. The following description of the Scheme is based on information provided by the applicant.

Relevant entities

Melbourne Unit Trust

10. Melbourne Unit Trust is a registered Managed Investment Scheme (MIS) under section 601ED of the *Corporations Act 2001* (the Corporations Act).

11. APGF Management Limited is the responsible entity of Melbourne Unit Trust.

12. The consideration paid by the unit holders in return for units in the Melbourne Unit Trust, was used to invest in the Melbourne Property Syndicate.

13. Melbourne Unit Trust derives income in the form of distributions from Melbourne Property Syndicate and has the prospect of making a capital gain or capital loss when Melbourne Property Syndicate sells its property assets.

14. Melbourne Unit Trust has rights to 44% of any distribution of income or capital by the Melbourne Property Syndicate.

15. Melbourne Unit Trust is a unit trust and all its units were issued after 19 September 1985.

Melbourne Property Syndicate

16. Melbourne Property Syndicate is a registered MIS under the Corporations Act. It holds investment property consisting solely of non-residential real estate in Australia.

17. APGF Management Limited is the responsible entity of Melbourne Property Syndicate.

18. Melbourne Property Syndicate is a unit trust for income tax purposes.

The restructure of Melbourne Unit Trust

19. APGF Management Limited is undertaking an economic amalgamation and restructure (the restructure) of a number of Property Syndicates including Melbourne Property Syndicate.
20. The restructure will be implemented only after a series of interdependent resolutions are passed by the Members of each Property Syndicate in general meetings convened for that purpose.
21. The purpose of the overall restructure is to aggregate the Property Syndicates by a single stapling proposal to facilitate re-financing of the bank debt of all Property Syndicates. The stapling of the ownership interests in all Property Syndicates should allow for the listing of the stapled securities on a recognised stock exchange. However, this has not been confirmed at this stage.
22. To simplify the current structure of investments, all units held by Melbourne Unit Trust in Melbourne Property Syndicate will be distributed in specie to the unit holders so that, like other investors in the Melbourne Property Syndicate, the unit holders will directly own their interests in the Melbourne Property Syndicate.
23. The key transactions under the proposed restructure are:
- On 1 February 2011, the trustee of Melbourne Unit Trust proposes to undertake an *in specie* distribution of the sole asset of the trust, being the units in Melbourne Property Syndicate, to the unit holders. This will then result in the unit holders of the Melbourne Unit Trust directly holding units in the Melbourne Property Syndicate in the same proportion (as practicable) as the units that they held in Melbourne Unit Trust.
 - The trustee of Melbourne Unit Trust will thereafter then cancel or compulsorily redeem all its units from the unit holders and proceed to wind-up the trust.

Ruling

CGT consequences

CGT event C2

24. CGT event C2 will happen when each unit in the Melbourne Unit Trust is redeemed or cancelled on 1 February 2011 (subsection 104-25(1)).
25. A unit holder will make a capital gain when CGT event C2 happens if the capital proceeds from the ending of the unit are more than the cost base of the unit. The unit holder will make a capital loss if the capital proceeds are less than the reduced cost base of the unit (subsection 104-25(3)).

26. The capital proceeds will be the market value, as at the time CGT event C2 happens, of the units in the Melbourne Property Syndicate that the unit holder becomes entitled to because of the redemption or cancellation of their unit in the Melbourne Unit Trust (section 116-20).

Demerger roll-over relief

27. Melbourne Unit Trust and Melbourne Property Syndicate comprise a demerger group as described in subsection 125-65(1).

28. A demerger, as described under section 125-70, will happen to the demerger group under the scheme.

29. A unit holder can choose demerger roll-over for the redemption or cancellation of their ownership interests, being units in the Melbourne Unit Trust (subsection 125-55(1)).

CGT consequences of choosing roll-over

30. A unit holder who chooses demerger roll-over will disregard any capital gain or capital loss made when CGT event C2 happens to their units in the Melbourne Unit Trust under the demerger (subsection 125-80(1)).

Other consequences of choosing roll-over

31. If a unit holder chooses roll-over relief, they must recalculate the cost base and reduced cost base of the units in the Melbourne Property Syndicate that they acquire in the demerger.

32. The first element of the cost base and reduced cost base of each unit in the Melbourne Property Syndicate is worked out as follows:

- ascertain the sum of the cost bases of the unit holder's units in the Melbourne Unit Trust (just before the demerger); and
- apportion that sum over the units in the Melbourne Property Syndicate received under the demerger (subsection 125-80(2)).

Unit trust unit holders who do not choose demerger roll-over

33. A unit holder who does not choose demerger roll-over will not disregard any capital gain or capital loss made when CGT event C2 happens to their units in the Melbourne Unit Trust under the demerger.

34. The first element of the cost base and reduced cost base of each unit in the Melbourne Property Syndicate is calculated in the manner described in paragraph 32 of this Ruling (subsections 125-85(1) and 125-85(2)).

Acquisition date of unitised interests in Melbourne Property Syndicate for the purposes of the CGT discount

35. For the purpose of determining eligibility to a discount capital gain, the units in the Melbourne Property Syndicate received by the unit holder are taken to have been acquired on the date the unit holder acquired, for CGT purposes, the corresponding units in the Melbourne Unit Trust (item 2 in the table in subsection 115-30(1)). This is the case whether or not demerger roll-over is chosen.

Commissioner of Taxation

19 January 2011

Appendix 1 – Explanation

① *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.*

CGT event C2

36. CGT event C2 will happen when each unit in the Melbourne Unit Trust is redeemed or cancelled on 1 February 2011 (subsections 104-25(1) and 104-25(2)).

37. A unit holder will make a capital gain if the capital proceeds from the ending of the unit are more than the cost base of the unit. A unit holder will make a capital loss if the capital proceeds are less than the reduced cost base of the unit (subsection 104-25(3)).

38. The capital proceeds will be the market value, as at the time of CGT event C2 happening, of the units in the Melbourne Property Syndicate that the unit holder becomes entitled to because of the redemption or cancellation of their unit in the Melbourne Unit Trust (paragraph 116-20(1)(b)).

Demerger roll-over relief

39. A unit holder can choose to obtain demerger roll-over as the conditions in subsection 125-55(1) are satisfied.

40. The units held by unit holders in the Melbourne Unit Trust constitute ownership interests under section 125-60.

41. A demerger happens to a demerger group (subsection 125-70(1)).

42. A demerger group comprises one head entity and at least one demerger subsidiary (subsection 125-65(1)). The demerger group in this case comprises Melbourne Unit Trust as the head entity and Melbourne Property Syndicate as its demerger subsidiary.

43. Melbourne Unit Trust is the head entity because Melbourne Property Syndicate has no ownership interests in Melbourne Unit Trust (subsection 125-65(3)).

44. Melbourne Property Syndicate is a demerger subsidiary of Melbourne Unit Trust because Melbourne Unit Trust owns ownership interests in Melbourne Property Syndicate that carry the rights to receive more than 20% of any distributions of the income or capital by the trustee of the Melbourne Property Syndicate (subsection 125-65(7)).

45. Under the in specie distribution, the unit holders will:

- acquire the same proportion of units in the Melbourne Property Syndicate as they originally held in Melbourne Unit Trust; and

- have, just after the demerger, the same proportionate total market value of the unit holding in the Melbourne Property Syndicate as they owned in Melbourne Unit Trust immediately before the demerger, as required by subsection 125-70(2).

46. CGT event C2 will happen on 1 February 2011 upon the cancellation or redemption of the unit holders units in the Melbourne Unit Trust and the unit holders will acquire replacement units in the Melbourne Property Syndicate.

CGT consequences of choosing roll-over

47. A unit holder who chooses demerger roll-over will disregard any capital gain or capital loss made when CGT event C2 happens to their units in Melbourne Unit Trust under the demerger (subsection 125-80(1)).

Other consequences of choosing roll-over

48. If a unit holder chooses roll-over relief, they must recalculate the cost base and reduced cost base of the units in the Melbourne Property Syndicate which they acquire in the demerger.

49. The first element of the cost base and reduced cost base of each unit in the Melbourne Property Syndicate is worked out as follows:

- ascertain the sum of the cost bases of the unit holder's units in Melbourne Unit Trust (just before the demerger); and
- apportion that sum over the units in the Melbourne Property Syndicate received under the demerger.

Unit trust unit holders who do not choose demerger roll-over

50. A unit holder who does not choose demerger roll-over will not disregard any capital gain or capital loss made when CGT event C2 happens to their units in the Melbourne Unit Trust under the demerger.

51. The first element of the cost base and reduced cost base of each unit in the Melbourne Property Syndicate is calculated in the manner described in paragraph 49 of this Ruling (subsections 125-85(1) and 125-85(2)).

Acquisition date of unitised interests in Melbourne Property Syndicate for the purposes of the CGT discount

52. For the purpose of determining eligibility to a discount capital gain, the units in the Melbourne Property Syndicate received by a unit holder are taken to have been acquired on the date the unit holder acquired the corresponding units in the Melbourne Unit Trust (item 2 in the table in subsection 115-30(1)). This is the case whether or not demerger roll-over is chosen.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 115-30
- Not previously issued as a draft
- ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)(b)
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 Div 125
 - ITAA 1997 125-55(1)
 - ITAA 1997 125-55(2)
 - ITAA 1997 125-60
 - ITAA 1997 125-65
- Subject references:*
- capital gains
 - capital proceeds
 - CGT event C2
 - cost base adjustments
 - demerger
 - demerger group
 - demerger subsidiary
- ITAA 1997 125-65(1)
 - ITAA 1997 125-65(3)
 - ITAA 1997 125-65(7)
 - ITAA 1997 125-70
 - ITAA 1997 125-70(1)
 - ITAA 1997 125-75(2)
 - ITAA 1997 125-80(1)
 - ITAA 1997 125-80(2)
 - ITAA 1997 125-85(1)
 - ITAA 1997 125-85(2)
- Legislative references:*
- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 104-25(1)
 - ITAA 1997 104-25(2)
 - ITAA 1997 104-25(3)
 - TAA 1953
 - Copyright Act 1968
 - Corporations Act 2001 601ED
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ATO references

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